SENATE—*Monday, November 18, 1991*

(Legislative day of Wednesday, November 13, 1991)

The Senate met at 12 noon, on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. Dr. Richard C. Halverson, the Senate Chaplain, will lead the Senate today in our petition to the Supreme Lawgiver and the Supreme Judge of the world.

Dr. Halverson, please.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Blessed are they which do hunger and thirst after righteousness: for they shall be filled.—Matthew 5:6.

Eternal God, perfect in truth, righteousness, and justice, our society languishes for righteousness. We speak much about justice, fail to take righteousness seriously, not realizing they are identical in the Bible. Righteousness is justice, justice is righteousness. To be just is to be righteous, to be righteous is to be just. Despite which we make much of the importance of justice while we disregard righteousness.

Righteous Lord, help us understand that there can be no justice without righteousness, no righteousness without justice, that legality and morality are identical to You. Grant to us the awareness that to be legal and immoral is a contradiction in terms. Help us realize that as health is to the body, righteousness is to the soul. Awaken in us a hunger and thirst for righteousness.

In His name who was righteousness and justice incarnate. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The Senate will be in order. Under the standing order, the majority leader is recognized.

SCHEDULE

Mr. MITCHELL. Mr. President, today, following the time reserved for the two leaders, there will be a period for morning business not to extend beyond 1 p.m., with Senators permitted to speak therein for up to 10 minutes each.

When morning business closes at 1 p.m. the Senate will resume consideration of S. 543, the banking bill. I understand from staff that the managers will be ready to proceed with an amendment as soon as the bill is resumed and other amendments are anticipated this afternoon.

As I stated on the Senate floor on Friday, in an effort to accommodate as many Senators as possible, we will attempt to schedule rollcall votes at a time at which the least number of Senators will be inconvenienced. I am advised, however, that rollcall votes could occur as early as mid-afternoon and will occur by late afternoon.

Mr. President, the target date for adjournment sine die is prior to Thanksgiving. That is now less than 2 weeks away and I want to repeat what I have said orally on several occasions and in writing to other Senators; that votes can be expected at any time on any day between now and then. Senators should be prepared for long sessions as necessary throughout the remainder of this session.

CLOSED CAPTIONING OF SENATE DEBATE

Mr. MITCHELL. Mr. President, today the Senate inaugurates a new service which will bring the Senate's Chamber proceedings to the hearing impaired, those elderly with slightly impaired hearing and those for whom English is a second language. This service, called closed captioning, combines the skill of specially trained court reporters with unique computer software to nearly simultaneously superimpose on viewers' TV screens the words Senators are speaking.

These closed captions are being shown to all viewers right now, but shortly only those with special equipment, called decoders, will be able to see the captions.

It is important in any democracy that all citizens, regardless of their abilities, have access to the workings of their Government. For too long, those with hearing impairments have been denied access to Senate sessions.

The ability to see and comprehend important national debates should be a basic right available to all Americans. Senate galleries have been opened to the public since the Capitol Building was first built. Nearly a decade ago, the Senate began televising its sessions. Through C–SPAN and the expansion of the Nation's cable system, almost half of our population can watch the Senate conduct the Nation's business. And today, through truly remarkable technology and human skill, these sessions are accessible to those nearly 23 million Americans who are totally deaf, suffer some hearing loss or are just learning English.

The Americans With Disabilities Act, which became law on July 26, 1990, mandated equal access by those with disabilities to Government activity. This law required that equal access be provided no later than January 1992. The Secretary of the Senate is to be commended for ensuring that the Senate meets the spirit of this law. It is one more step taken by the Senate to make sure every American has full opportunity to know what his or her Government is doing on his or her behalf. To them we say welcome.

Our elderly frequently suffer just enough hearing loss to make watching TV difficult and frustrating. Captioning technology makes it possible for them to watch TV again. We also know that many of our Nation's elderly watch the Senate and House in session and maintain a keen interest in the workings of their Government. To them we say welcome.

Captions are more and more frequently used as a learning aid by those whose first language is not English. Many of these people are new immigrants attempting to learn the language of their new nation. To them we say welcome.

I know my friend, the distinguished Republican leader, joins me in greeting all of our new viewers. And I restate once again our goal that all Americans should have the opportunity to fully use their abilities, not to be limited by their disabilities.

Mr. DANFORTH. Mr. President, I wonder if the majority leader would yield for a question relating to the possibility of a tax extender bill reaching the floor?

Mr. MITCHELL. Certainly, Mr. President, I will yield.

RESERVATION OF LEADER TIME

Mr. MITCHELL. Might I first reserve the remainder of my leader time and all of the leader time of the distinguished Republican leader.

The PRESIDENT pro tempore. Without objection, it is so ordered.

A TAX EXTENDER BILL

Mr. DANFORTH. Mr. President, as the majority leader well knows there are some 12 provisions in the Internal Revenue Code which will expire on December 31, if no action is taken by Congress. Those include the low-income

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

housing tax credit, which the majority leader has been instrumental in, the research and development tax credit, the targeted jobs tax credit, and nine other items.

I know that one of the concerns that has been expressed is that a tax bill which comes to the floor of the Senate is likely to be a Christmas tree. But last week, Senator DODD and I circulated a letter. We have 76 Members of the Senate who have signed on to the letter. And the letter concludes by saying:

> We agree to oppose any amendments to a bill which extends these 12 expiring tax provisions.

My question to the majority leader is whether the majority leader would be willing to enter into discussions with the Republican leader and with the chairman and ranking member of the Finance Committee, and perhaps with the leadership of the House of Representatives, for the purpose of exploring the possibility of bringing to the floor of the Senate a simple, clean extender bill between now and when we adjourn?

Mr. MITCHELL. Mr. President, not only would I be willing to, but I have already begun that process, prior to this discussion and prior to the receipt of the letter, with some of the persons mentioned by the distinguished Senator from Missouri and while I do not make scheduling decisions ever without full prior notice and consultation to the Republican leader, and so obviously will not do so in this case, I do want to express my personal view that I am strongly in favor of extending these tax provisions. As the Senator from Missouri knows, I was the author of the low-income tax provision and he joined with me and greatly strengthened and improved that legislation. It is very important legislation, to which I am deeply committed, as are many of the other expiring provisions to which he referred.

I was heartened by the receipt of the letter which Senator DODD delivered to me late last week. I had previously discussed the matter with some of the key participants, to which the Senator from Missouri referred, in an effort to figure out a way to get some or all of those expiring provisions extended. And I assure the Senator that I will take it up with the distinguished Republican leader today. We have a meeting scheduled later today to discuss a number of matters, including scheduling for the remainder of this session. I want to thank the Senator from Missouri and commend him for the effort and leadership that he has demonstrated in this area.

Mr. DANFORTH. I thank the majority leader.

Mr. MITCHELL. Mr. President, I yield the floor.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, morning business will extend until 1 o'clock p.m., with Senators permitted to speak therein for not to exceed 10 minutes each.

Mr. CRAIG addressed the Chair.

The PRESIDENT pro tempore. The Senator from Idaho [Mr. CRAIG] is recognized.

TAX-CUT FEVER

Mr. CRAIG. Mr. President, I think all of us have read the headlines in the papers over the last several weeks that tax-cut fever is sweeping the Congress of the United States. It is a term certainly I have read and many have talked about.

Frankly, it is an exciting term. It has been a long time coming to recognize some of the burdens we placed on the economy of this country. I am excited to see some of my Democratic friends talk about tax cuts. I would like to suggest that maybe that is an important new word to their vocabulary, but whatever it is, Mr. President, I suggest to this body that a good case of congressional tax-cut fever might just succeed in curing some of the ills of our economy.

I do not believe there is any mystery about why we are having economic problems today. Taxes are, in most cases, too high, and those taxes are oftentimes strangling the economy, locking up investment and, when it is freed, it oftentimes runs overseas to avoid abusive taxes that we have in this country.

What happens, Mr. President? People are put out of work, and I think the future of our country, our economic future is seriously threatened.

The real standard of living is declining for the first time in decades in this country and young couples simply do not know what to do about it and are unprotected by what is currently going on. Last year's budget agreement, the same agreement that was supposed to bring about a reduction in deficits and increased prosperity in this country in my opinion has dealt a substantial blow to an economy that was vulnerable at the time and remains vulnerable today. It has generated a deficit of over $280 billion and it raised taxes.

History, or a brief scan of tax history, suggests this was the first time that Congress actually increased taxes in the face of a recession since the Great Depression of the thirties. That is why a number of us opposed the budget agreement at the time, and why many of us now would like to see the Senate and the Congress of the United States enter into some serious tax policy consideration, tax policy that would bring about tax reduction and play an important role in moving this economy ahead.

Mr. President, although I hope the headlines are correct and that we really are going to experience some tax-cut fever, I also hope it does not cause us to lose sight of our real goal, and I believe that real goal has to be moving our economy in a positive direction as quickly as we can address it. It is important to acknowledge that not all tax cuts are going to be equally effective in achieving that goal. Therefore, I think it is our responsibility to sort those whose could be effective in that goal and that purpose.

One of those, in my opinion, is to address the question of taxing inflation. Of all the American taxes today, none is more unfair and unreasonable and I believe destructive than that kind of a tax that actually goes after the inflation. It occurs as a result of what we are now doing to a capital gains policy in this country. It occurs because that policy taxes the profit made on the sale of a capital asset and it addresses and does not recognize the inflation that would be involved in that kind of a gain. Certainly that does not assist nor does it encourage the kind of capital investment critical to stimulating the economy and bringing about job creation.

Let us take an example of an American homeowner who I think all of us can understand, Mr. President. Say you purchased a home years ago and its increase in value has only kept pace with inflation itself. If you were to sell the house today, you would have a capital gains because according to our tax policy you would be making a profit and, of course, you would have a 28-percent tax on that profit.

The reality says, however, that your values have increased because of inflation, not true or real profit. You are back to square one until you pay the tax which actually puts you at a loss. In other words, today if you cannot defer the capital gains tax on your house, you would not be able to buy a better home. If you were to relocate for employment reasons, you would have to buy possibly a cheaper home or actually downgrade your living situation.

Mr. President, last week in the airport in my home State of Idaho, the Boise airport, a businessman came up to me and said, Senator, I am starting a new business here in Boise, a new software business, and I have gone around the country searching for the kind of employees I need to strengthen this business. I found five. Five men and women who would like to move to Idaho to become my employees and work with me in the strengthening of this business, but none of them will move today because of the capital gains consequence that they would have to take on their house and the uncertainty of the economy.

Put those two combinations together today, Mr. President, and we see a very sluggish economy as a result of it.

So the example I just gave is not farfetched. Just last weekend that exam-

ple came home and clearly it affects the employment base that we are talking about, job expansion, the kind of economic movement that we would all want to see in this country. So it is real life, it is happening.

Senator SYMMS, my colleague from Idaho, and I introduced two different versions of capital gains reform this past year. Yet, they said in committee nobody wants to talk about it, we are all in a flurry now about seeing who is on first, and who is on second, about who can cut the most. Let me suggest as we talk about this Congress opening up a budget agreement to address tax policy that we truly address that which will, in fact, generate growth in this country, that will create jobs and will not be just a redistribution of the wealth of this country.

Another example is true in my State, as is true in many States. We have part of my agricultural industry that is in very tough difficulty at this time, the dairy industry. And yet we have men and women in that industry who, because of the economy, would like to retire out of it, sell off their dairies and go into retirement. They cannot afford to do so. Why? Capital gains treatment. Again, not addressing real profit but addressing inflationary profit, if you will, or inflationary margins which is simply unfair.

Why should anyone then sell a house, or a farm, or any kind of other capital asset today if they are going to actually lose money by doing so? The answer is they should not. The answer is they are not. As a result, we have seen substantial economic slowdown, less job creation. We all know the current state of the economy as a result of it, and yet this Congress, this Senate, will not address the real important value of a capital gains tax reduction that would address inflationary attributes of it and, therefore, allow real profits to once again move in the economy for job creation.

I have heard a lot of bickering back and forth about this issue, but I do not think anybody is yet willing to address it. Why? Because of the argument that we might be giving the advantage to someone who is rich. This has become a rich-poor argument. The two examples I have just given are not rich examples. Let me suggest that this is not a rich or a poor issue. If it is, then by definition, my Democrat colleagues in the House are suggesting that everyone who owns a home or a farm in this country today who might like to sell it because they would wish to retire or they would wish to move is a rich person. We know that is not the case at all. Capital gains has always been a recognition and a treatment of the true value of an investment and the profit coming from that and not the inflationary kind that I just mentioned.

Mr. President, our colleague, Senator BENTSEN, chairman of the Finance Committee, has recognized the need for tax cuts to promote capital gains formation, and I applaud him for doing that, and I would applaud this Senate if we were to move clearly in that direction. It is fundamentally important that we do so in the coming weeks and months if we are to see this economy move in the vibrant way that we would expect.

Indexing is key to that. Recognizing inflation embodied within that kind of growth in one's investment is fundamentally important, and I urge my colleagues to join in this effort to get the job done before it is too late—clearly, before we see this economy drop even further and see more of our fellow citizens unemployed.

I yield back the remainder of my time.

The PRESIDENT pro tempore. The Senator from Nevada [Mr. REID] is recognized for 10 minutes.

CONGRESSIONAL REFORM

Mr. REID. Mr. President, I rise today to talk about Senate Concurrent Resolution 557 which was authored by Senator BOREN of Oklahoma.

This legislation, which was introduced in July of this year, now has 27 sponsors. In effect, what this legislation does is say that it is time we, the Congress, took a look at ourselves to find out how we work and what we can do to improve the way we work.

As an institution, Congress has come under increasing criticism in recent months. It has come under criticism from our constituents, the press, and sadly, Mr. President, even some of its own Members. I think, frankly, that is one of the problems of this institution—Members of the House and the Senate do not speak out for the good things that happen. Rather, when they go home to townhall meetings or press interviews, they tend to join the throng in bashing Congress. Congress is seen as caught in the swirl of negative politics, attack politics, vicious politics, personal politics, cheap sloganeering politics, and even trivialized campaign issues.

It is not as if Congress has not in the past looked at itself, because it has and there have been major reorganizations in years gone by. But in recent years, Congress has made review of its operations in 1976, 1977, and 1984. There needs to be some things done, however, Mr. President.

Just 3 years ago, the Senate Rules Committee issued a report on Senate operations, and they concluded that the following appear to merit particular attention: efficient use of a Member's time on floor activities. The Rules Committee further went on to say that we need to take a look at the difficulty of scheduling business on the Senate floor. The Rules Committee further said that there are recurring concerns over committee assignments and schedules, the issue of germaneness and other proposals affecting floor amendments, and they said we should look at the frustrations that often result from the authorization-appropriation-budget process.

Just this session of Congress, over 200 bills have been introduced in the House and Senate to review the way Congress does business.

The reason I particularly think we have to take a close look at the legislation of Senator BOREN is that it does not appear to want to take a look at Congress on the cheap, so to speak. It does not, for example, talk about term limits, which is the vogue of the day. It is, in this Senator's opinion, one of the most wasteful discussions that we have. In fact, it seems strange that in Eastern Europe they are becoming free, that is, they are going to be able to vote for their representatives and all of government, and we are having a supposed wave sweep this country which says there are people who will not be able to vote for whom they want because there will be an arbitrary limit saying that a House Member after serving three terms, for example, would not be able to serve another.

To show how arbitrary and capricious the term limit would be, it would, in effect, Mr. President, increase the power of what our constituents want less power of, and that is the bureaucrats, staff, and lobbyists would become even more powerful.

Senator BOREN's legislation does not direct its attention to term limits or something like the line-item veto which is a way that people want to cure all the ills of government very easily, when in fact we know that the Founding Fathers threw out term limits recognizing that it would not work.

The reason I think Senator BOREN's legislation deserves some attention is that he has given some serious thought to this. This is in keeping with the way Senator BOREN has conducted himself during his governmental service. He served in the State legislature. He was elected, as a very young man, as Governor of the State of Oklahoma on a platform to reform State government, and in fact he did that as Governor.

I think he comes well suited to sponsor legislation like he has. We all know that Senator BOREN is a Rhodes scholar. He is a thoughtful man. So I commend and applaud Senator BOREN for drafting this legislation.

In effect, what this legislation does is create a Senate-House committee to examine our operations and make recommendations for change. The problem of inefficiency is something that has plagued both Houses of Congress. Between 1970 and 1990, the number of subcommittees in the House grew 40 percent. Committee staff during that same time grew almost 200 percent.

There does need to be some attention directed toward this issue.

The committee that we hope will be appointed should look into the hours spent on committee hearings, markups, hours spent on the floor, number of rollcalls taken versus the amount of work that gets done.

I think one of the things we could do to improve efficiency around here—and I am sure the committee will look into this—is to deemphasize the importance of everyone being here for a rollcall vote that passes overwhelmingly. We drop the most important committee hearing because we need to come over here and vote when the vote is 86 to 3. We drop the most important business being conducted with the administration, with the White House. Meetings with the President are suddenly abandoned because there has to be a rollcall vote attended. There has to be a deemphasis placed on that.

The Senate, Mr. President, is wasting time on lopsided votes, as I have mentioned. Senator BOREN has estimated as much as 25 percent of his floor time is spent on these quorum calls and lopsided rollcall votes,

Floor deliberations many times are seen as meaningless and poorly attended.

I think it is important if we just reflect back. I have served in this body 5 years, and there are not many important debates that have taken place where there has been good attendance in this Chamber. Of course, we try to watch as much as we can with the television that we have in our office, but as I look back, there were some important debates that everyone should have attended. I can reflect on two where Senator BUMPERS, for example, gave a brilliant statement on this floor regarding battlefield monuments.

There was another floor statement given in the past month or so, Mr. President, with very few people here. It was given by the President pro tempore dealing with the Thomas nomination. Everyone should have heard that debate, and they did not because we were off doing things that probably were not as important as listening to something as important as his statement on that debate.

So, Mr. President, I again commend and applaud Senator BOREN for the leadership he has shown on this issue. I hope that we, as a body, will join him in recognizing that we do need to do certain things which will improve the efficiency of this body and still not take away the power of the legislative branch of Government, which was given to us by our Founding Fathers, which gives the State of Nevada as much authority and power as the great State of California.

I yield the floor.

The PRESIDENT pro tempore. The Chair recognizes the Republican leader whose time has been reserved by unanimous consent.

Mr. DOLE. I thank the President pro tempore.

CLOSED CAPTIONING OF SENATE PROCEEDINGS

Mr. DOLE. Mr. President, 1 year ago, Congress joined with President Bush to enact the landmark Americans With Disabilities Act, a sweeping reform package that guarantees persons with disabilities access to the mainstream of American society.

Today, I am pleased to join with my colleagues in celebrating another breakthrough for Americans with disabilities—closed captioning of the proceedings of the U.S. Senate.

Beginning today, a significant but for too long forgotten segment of American society will now have the immediate capability to follow action in what historians call the world's greatest deliberative body.

Hard to believe now, but as recently as 1984, television and radio coverage of Senate action did not exist. With the advent of gavel-to-gavel Senate television coverage, vast numbers of Americans have kept watch on their elected officials. Today, we have taken the next logical step—by beginning closed captioning, this body's proceedings will be available, with the use of a closed-captioning decoder, to the more than 23 million Americans who are hearing impaired, including the 2 million Americans who are profoundly deaf.

Mr. President, closed captioning also brings additional advantages—implementation of this innovative technology will also open new doors for those with learning disabilities, and those using English as a second language.

Studies have shown that captioning improves the vocabulary and comprehension of remedial readers. Additionally, those working with illiterate adults have found that captioning is effective in motivating adults to learn reading skills.

Mr. President, I am proud to have sponsored both the Americans With Disabilities Act and Senate Resolution 13, which called for closed captioning of Senate proceedings. I know all my colleagues join me and Senator MITCHELL today in recognizing this milestone, which removes another barrier to fulfilling the promise of the Americans With Disabilities Act.

By opening this important window on our democratic process, we are taking action to ensure that the world's greatest deliberative body is also the world's most accessible legislative body.

EXTENSION OF TAX CODE PROVISIONS

Mr. DOLE. Mr. President, I certainly agree with my colleagues, particularly my colleague from Missouri, Senator DANFORTH, with reference to economic stability, and what we might do between now and the time we recess.

The Senator from Missouri has made a very cogent case that we ought to extend expiring provisions of the Tax Code which offers certain tax incentives to a number of different groups around the country. I certainly do not disagree, and I know he is making a valiant effort. I know there are 70-some, 76 or 79, Senators now bringing that bill to the floor to extend all of these so-called expiring provisions, and that they will forgo offering any other amendments.

We have to remember, this has to originate in the House. It is a revenue bill. It would have to originate there—plus, we have to pay for it.

I understand the Senator from Missouri. There are a number of ways they can find to pay for it. I can tell you, having just dealt with extended benefits for the unemployed, that paying for things is not easy. Given the difficulty of bringing a tax bill to the floor, I think, rather than have all the extenders out there, maybe we ought to pick out the most important ones.

I have to believe that the country would still survive if all of these were not extended; if some were eliminated totally. We are looking at all the spending provisions. Why should we not look at some of the tax provisions that cost the American taxpayer money, too? Certainly, the R&D credit should be extended. I think low-income housing—though I must say I think there are some who question the benefits of the low-income housing credit—certainly helps a lot of people up the ladder. I am not certain it would help those at the bottom of the ladder.

I think we need to take a look at some of these provisions. I will not list them all. I would certainly strongly urge the extension of the 25-percent health care deduction for the self-employed. It is very, very important. Without it, many simply will go without health insurance which is going to add to the crisis.

So I will just suggest, without going down the list of all 12 of these expiring provisions, that somebody can probably make a case for every one of them. But can we make a good case for every one of them? It seems to me, in this time of tight money when we do not have much flexibility, that we ought to try to limit our tax spending, just as we limit other spending.

Someone should take a hard look at these expiring provisions. We sort of extend them automatically, year after year, without thinking much about it. That is why when we add up the Federal deficit it is now $3½ trillion, because nobody ever takes a look. We figure, well, some special-interest groups want this extension, so we ought to extend it. My view is we ought to take a look, and we ought to try to find out which ones are necessary and which ones do not really serve any useful purpose, but are there primarily because some special-interest group has made a case and then asked Congress to extend

that provision year after year after year.

CREDIT CARD RATE CAP

Mr. DOLE. Mr. President, I will comment on a matter that has been in the news over the weekend. That is the so-called credit card rate cap. I know there has been a lot of gnashing of teeth and a lot of bankers have been calling in—some probably with justification—some big banks saying they may go out of business; they have to fold up the bank.

A lot of that probably is scare tactics, but there may be a certain amount of truth. And probably Congress should not try to involve itself in the marketplace. I must say, I think there were a number of votes cast for this credit card rate cap sort of to send some of the bigger banks the signal to help us get together a banking bill.

Let us start being part of the solution instead of part of the problem. I think banking legislation is very important. We may be in the last week of the session this year. I think we need to know that we are going to have some help from the American Bankers Association and others in putting together a responsible banking reform package.

So I would say that some of the votes, some of the 74 votes cast in favor of the amendment, were to send signals to those who were all over the lot on banking legislation, to kind of try to come together and try to help the Secretary of the Treasury, Secretary Brady, the administration, and the legislative leaders on both sides of the aisle to put together banking reform legislation that is meaningful and will help the American consumer, the banking community, and the business community; and help in what little way it can to pick up the recovery.

There are some alternatives to the amendment that was adopted. Those may be offered today, or sometime later. We will be speaking more about alternatives to the amendment adopted last week by a vote of 74 to 19.

Those of us who voted for that amendment are not trying to do in banks; we are not trying to do in consumers. But I must say, a lot of us—maybe not experts in the matter—wonder why they just send credit cards out like coupons all over America. Just send them out; maybe somebody will use the credit card, and somebody else has to come along and pay high interest rates on their credit card purchases to take care of big losses.

There has to be some way to encourage these big banks to at least check on somebody's creditworthiness before sending out credit cards, which they can then use to go in and buy merchandise, whatever the limit may be. They can use the card up to that limit, and then they do not pay. Somebody else has to pick up the tab.

It seems to me it is not very good business, though I understand the banks make a pretty good profit in this business. Some of us want to work with the administration. Maybe there should not be legislation; maybe there should not be a mandate.

So let us all get together to figure out something where the banking community can help us get a banking reform bill, and we can help them get some more flexibility in setting bank credit card interest rates.

Mr. President, I yield the floor.

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER (Mr. REID). The Senator from Idaho.

CONFEREES ON THE GUN BILL

Mr. SYMMS. Mr. President, over the past several days, I have objected to the appointment of conferees on the antigun bill approved earlier this year by the Senate.

I have objected to conferencing this bill because I believe what this country needs is crime control, not gun control. Frankly, Mr. President, the Senate version of the legislation would do too much to abrogate the second amendment to the Constitution and too little to place the penalty for violent crime where it belongs: on the criminals.

Mr. President, each year, roughly 20,000 people are murdered in the United States. That means that 55 people will be killed in the United States today. Over two will be killed this hour, one will be killed in the District of Columbia, probably within a few miles of this building or blocks, possibly.

Only a microscopic percentage of these homicides will be committed with the semiautomatic weapons outlawed by this bill—fewer than are committed with "knives or stabbing instruments"; fewer than are committed with "blunt objects" or hands, feet, or other body parts; fewer than are committed by strangulation.

Furthermore, 80 percent of the weapons used in committing homicides will be obtained unlawfully—80 percent. This means that no gun ban, no waiting period, no background check will be effectual in averting these homicides. They buy the guns illegally anyway. It is instructive that the recent increase in the rate of violent crime in three typical non-waiting-period States—Virginia, West Virginia, and Montana—was 51 percent. What happened in the three waiting-period States—New York, Massachusetts, and Connecticut? The crime increase was an incredible 362 percent. In other words, the rate of increase in violent crime in these three waiting-period States was over seven times what it was in the States without waiting periods.

Mr. President, the fact is that the way to control violent crime is not to ban guns, but to arrest and incarcerate criminals. In a 1990 study, the Department of Justice published an elaborate profile of felony defendants in large urban counties. If found that two-thirds of the felony defendants studied had an arrest record. Almost four-fifths of that group had a felony arrest record. Furthermore, one-quarter of all felony defendants had four or more prior felony arrests.

Mr. President, it does not take a rocket scientist to figure out that the way to control crime is to put the criminals in jail and keep them there. Unfortunately, with few exceptions, such as the Symms admendment to impose the death penalty in the District of Columbia, the Senate-passed crime bill would not punish criminals. Rather, it would punish law-abiding gun owners. How is that going to make America a safer place to live, if you punish law-abiding gun owners who might be able to defend themselves from violence and make the streets safer places to live?

Mr. President, I say again that we need a crime bill, but we need an anticrime bill, rather than a procrime bill, which I am afraid the Senate-passed version has become. Therefore, Mr. President, the Senate-passed procrime bill, antigun bill will not be sent to conference during the first session of the 102d Congress if this Senator has anything to say about it.

THE CLEAN AIR ACT AMENDMENTS

Mr. SYMMS. Mr. President, on another subject, I wish to discuss with the Senate this morning what is happening with respect to our economy and, specifically, what is happening to the regulatory side of our economy. A little over a year ago, the Senate passed and the House passed legislation that was signed by the President, the 1990 Clean Air Act Amendments.

Mr. President, I just say that if the Senate, the House, and the White House want to do something to help the economy, maybe they ought to just have a stay of execution of the implementation of the Clean Air Act for 4 or 5 years, because it might do more for the economy than anything we can do with respect to tax cut and so forth.

I want to read a quote from Warren Brookes' column of November 14, 1991:

> Instead of a tax cut, President Bush could do much more for the U.S. economy by suspending implementation of the 1990 Clean Air Act, for one or two years, saving the economy $40 billion a year for little or no loss in benefits. With the auto industry losing $5 billion so far this year, it really ought to be repealed.
>
> That point was driven home when nine Eastern States plus the District of Columbia announced they would adopt the more stringent California clean air standards, including tighter tailpipes and forced introduction of alternate fuels and electric cars.

This decision will raise the implementation cost of the Clean Air Act from an estimated $400 per new car to as much as $1,000 and raise fuel costs in those States by 15 percent to 25 percent.

I make these points, Mr. President, not necessarily to say, "I told you so," to my colleagues here in the Senate, but it appears to this Senator that the more this Congress acts, the worse the economy gets.

What kind of things do we do? We continue to impose regulations on the producers of the country that have to generate the wealth so that we can enjoy a good standard of living, so we can take care of the disadvantaged people, so we can have a clean environment. But we literally seem to deny reality and not face reality, Mr. President, when it comes to congressional action.

This is an extremely intrusive bill to the regulatory activities of the country. The overkill that came in the Clean Air Act is all too typical of congressional action. It is just like the fact that we do need bank reform, for example. I happen to be in favor of bank reform, so American banks can once again compete on a worldwide basis on a level playing field. What does the Congress decide to do? Impose congressional mandates into the setting of interest rates on credit cards. How we could come to that conclusion that that would be a wise thing to do is beyond this Senator. Of course, I did not vote for it. Unfortunately, it passed, and it sent a scare through the market—maybe an exaggerated scare.

One wonders how much abuse the capitalist system can take from the Congress imposing these regulations. It is a coercive utopia we live in, thinking that we can impose a utopian standard on the world the way we think it should be, and deny the actions of the marketplace. That is what the issue is about.

Mr. President, I will soon ask unanimous consent to have printed in the RECORD a column by Warren Brookes, "High Costs of Going California," from the November 14, 1991, commentary section of the Washington Times; a second column on November 18, 1991, "Clean Air Act Overkill," where he goes into what happened when Amoco recently closed its Casper, WY, refinery as of December 1 "because it requires substantial capital investment that cannot be justified, given the marginal economic performance of the refinery" to comply with the 1990 Clean Air Act. So the people that live in Casper, WY, just got the shaft. They lost 210 jobs and $10 million a year from some 50 area gas stations who have to look for other sources of employment and fuel, because while "Amoco is committed to protecting the environment," to comply with the law, those folks are just left out.

It is interesting, if you read the risk assessment, what it costs to close a plant like that. It ends up costing the economy more than a substantial percentage of what we spend at the National Institutes of Health doing cancer research. The risks are only one cancer more that might have come from that plant, theoretical risk for the likely cost of the Clean Air Act, 331 theoretical cancer risks and we cannot provide basic health insurance for all uninsured Americans.

I ask unanimous consent that these articles be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Times, Nov. 14, 1991]

HIGH COSTS OF GOING CALIFORNIA

(By Warren Brookes)

Instead of a tax cut, President Bush could do much more for the U.S. economy by suspending implementation of the 1990 Clean Air Act, for one or two years, saving the economy $40 billion a year for little or no loss in benefits. With the auto industry losing $5 billion so far this year, it really ought to be repealed.

That point was driven home when nine Eastern states plus the District of Columbia announced they would adopt the more stringent California clean air standards, including tighter tailpipes and forced introduction of alternative fuels and electric cars.

This decision will raise the implementation cost of the Clean Air Act from an estimated $400 per new car to as much as $1,000 and raise fuel costs in those states by 15 percent to 25 percent.

This might be worth it if there were really significant potential gains. There aren't. When you examine the *actual* ozone exceedance data for 1989 through 1991 (the most recent three-year period), not only does "going California" look ludicrous, the entire $12 billion ozone non-attainment section of the Clean Air Act looks insane. Sadly, the Environmental Protection Agency is still scaring states by issuing obsolete 1987–89 averages that wildly overstate current reality. (See Table.)

In the 1989–91 period, six of the 10 "going-California" states (counting D.C.) had one exceedance day or less per year, meaning they were in *full compliance*. The other four averaged five days a year and were thus in compliance 98.6 percent of the days. Even New York City had an average seven days exceedance, a 98.1 percent compliance rate. The EPA still rates it "severe."

By comparison, Los Angeles averaged 121 days a year of ozone exceedances and was in compliance less than 70 percent of the time. This means using California standards to deal with infinitesimal Northeast smog levels is like preparing a Mount Everest expedition to climb the San Francisco hills (particularly when California's own South Coast Air Quality Management District is already easing its own rules for economic reasons).

More important, in the East, the National Oceanographic and Atmospheric Administration estimates more than 60 percent of ozone precursors are natural hydrocarbons (trees etc.). And since auto volatile organic compounds only account for 30 percent of total volatile organic compounds, and new cars only 3 percent of total autos, a 10 percent to 15 percent reduction in new auto emissions cuts total smog precursors only 1 percent. With up to $1,000 higher costs per new car, that could leave more dirty, older cars on the road.

A recent Unocal study shows 1970 vintage cars emit 24.8 grams of hydrocarbons per mile, 1975 cars 8 gpm, current new cars only 0.4 gpm. That's why enhanced inspection and maintenance is the lowest-cost way of cutting emissions, $600 per ton compared with up to $50,000 per ton for "clean fuels."

Indeed, 75 percent of the added emissions reductions claimed for California controls in a study by the Northeast States For Coordinated Air Use Management come from enhanced inspection and maintenance.

But politicians don't like inspection and maintenance because it increases state government costs and makes voters mad. That's why most of the 10 states "going California" have skipped inspection and maintenance and will adopt only those things that can be passed back to the oil and auto industries (and then on to us). But this produces only a net five-hundredths of a gram per mile improvement over the Clean Air Act, a minuscule gain.

Worse, EPA is hyping this process by withholding valuable information about the actual trends in surface ozone in U.S. cities that show the 1988 data (on which the 1990 Clean Air Act was based) were so anomalous as to be fundamentally deceptive.

In 1988, there were 925 ozone exceedances in the top 114 metro areas. In 1989, that plunged to 234, and in 1990 to 286. In the non-California urban areas, the plunge was even more dramatic from 617 exceedances to an average of 122 from 1989 through 1991, from six per city in 1988 to an average of about one from 1989 through 1991, from 85 non-California cities out of compliance to only 22, from 1989 through 1991.

To put it bluntly, the 1988 data were a meteorological fluke that no amount of emissions controls could change. In city after city still listed as "severe" or "serious" ozone exceeders by the EPA, the 1989–91 data show no such dangers. For example, in 1988, Chicago had 16 exceedance days. From 1989 through 1991, it averaged only one.

Newark, with eight days in 1988, fell to one for 1989–91 and is now in compliance. Boston with 10 exceedances in 1988 averaged two for 1989–91. Richmond, Va., with nine in 1988, averaged under one in 1989–91 and is now in compliance. The same holds true for Washington, D.C., St. Louis, Cleveland and Pittsburgh, as all but a handful of cities are now within three days of compliance, which is well within the statistical errors inherent in EPA ozone testing.

In short, suspending the 1990 Clean Air Act would have no measurable effect on human health or the ecology. Indeed, by speeding up new car buying, it could actually produce cleaner air.

[From the Washington Times, Nov. 18, 1991]

CLEAN AIR ACT OVERKILL

(By Warren Brookes)

On Oct. 3, the Amoco Oil Co. announced it would close its Casper, Wyo., refinery on or about Dec. 1, "because it requires substantial capital investment that cannot be justified, given the marginal economic performance of the refinery in recent years."

The company said compliance with the 1990 Clean Air Act amendments, added to other environmental requirements under the Resource Conservation and Recovery Act and the Clean Water Act, would cost an estimated $150 million for a plant whose present value is only about $25 million.

So, its 210 employees and some 50 area gasoline stations will have to look for other sources of employment and fuel, because while "Amoco is committed to protecting

the environment, the enormous expenditures required make it imperative that we commit our capital to refineries that have a more favorable outlook."

Environmentalists will point out this was a small and economically marginal plant. True, but that is precisely why it is so vulnerable to any major increase in regulatory costs. Indeed, the biggest danger of these costs is not to established corporations, but to smaller, more marginal businesses.

But as one environmentalist said to us casually, "Well, then, maybe they shouldn't be in business, if they can't meet the clean air standards." That argument, as hardhearted as it sounds, would still be acceptable if the ecological and health benefits were sufficient to offset the economic costs. In the case of the Amoco Casper refinery, that's a very hard case to make.

Nationwide, the total regulable risk for all "hazardous air toxics," using the Centers for Disease Control (CDC) exposure models, is about 230 cancer risks. When you add in the regulable risks for petroleum refineries from the Resource Conservation and Recovery Act and the Clean Water Act, that number rises by another 57 to less than 290. This means that the total risk from all such hazardous releases in Wyoming (using a straight population share) comes to about 0.5 cancers every 70 years. Casper's rough share comes to 0.04 cancer risks. Given Casper's tiny industrial density, that undoubtedly *overstates* the danger by at least one order of magnitude (tenfold).

In short, shutting down the Casper refinery, which will cost the Casper economy at least $10 million a year in direct and indirect costs, or bringing it up to compliance (for about the same annualized costs) will generate a cost per cancer risk averted of $2.5 billion, or about one-third more than the entire cancer research budget of the National Institutes of Health.

This is not unusual. The Clean Air Act, contrary to some fatuous claims by Environmental Protection Agency contractors (such as the American Lung Association) has a maximum regulatory risk pool of 1,028 cancers, using the EPA's "wild and crazy" risk models, or 231, using a more realistic, but still very conservative CDC risk model. With an estimated total cost of $40 billion a year, this would produce a cost per cancer risk avoided of $173 million, even if you assumed *total* effectiveness, which no one claims. Realistically, that figure is probably closer to $500 million each.

Costs like that can't really be tolerated even in a booming economy, let alone one that is plunging over a cliff. Yet, an analysis done in 1989 by Dr. Michael Gough, currently the top risk assessor at the congressional Office of Technology Assessment, shows the entire "regulable" risk pool in the EPA's 1989 "Unfinished Business" inventory is about 1,232 cancers.

That includes everything from pesticides on food (300) to all waste sites, hazardous and non-hazardous, active and inactive (516) to hazardous toxic air (231). Since the nation now has about 500,000 cancer deaths a year, even if we were somehow able to avert all of these risks, we would only cut the nation's cancer death rate—at the most—by about two-tenths of 1 percent.

No one knows the cost of such an undertaking, but if other laws are no more cost-effective than the 1990 Clean Air Act, the cost could be an additional $200 billion over and above the $115 billion we now spend, which in turn is 2.4 times as much as our competitors spend as a share of gross national product.

Now, with the risk models on dioxin, polychlorinated biphenyls (known as PCBs), polybrominated biphenyls (PBBs), and other substances listed among Clean Air toxic targets proving to be vastly overstated, those costs are likely to be even more ludicrously out of line with any economic or ecological realism.

Indeed, for the likely cost of the Clean Air Act and its 231 theoretical cancer risks, we could provide basic health insurance for all 35 million uninsured Americans or, in the short run, working capital for at least 1 million jobs, not to mention all the jobs we are losing in marginal plants like Amoco, Casper.

Since the adoption of the Draconian standards set by the South Coast Air Quality Management District, the state has hemorrhaged more than 3,000 businesses to other states, forcing South Coast Air Quality Management District to announce on Nov. 7 that it was easing its rules.

House Energy and Commerce Chairman John Dingell, Michigan Democrat, should give the U.S. economy a real "tax cut" and start the repeal or suspension of President Bush's disastrous 1990 Clean Air Act amendments.

Mr. SYMMS. I ask unanimous consent that an indepth study on the "Impact of Environmental Legislation on U.S. Economic Growth, Investment, and Capital Costs," by Dale W. Jorgenson and Peter Wilcoxen and their supportive bibliographies and references be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

IMPACT OF ENVIRONMENTAL LEGISLATION ON U.S. ECONOMIC GROWTH, INVESTMENT, AND CAPITAL COSTS

(By Dale W. Jorgenson and Peter J. Wilcoxen)

1. INTRODUCTION

The Clean Air Act Amendments of 1990 have inaugurated a new era in environmental legislation in the United States. This landmark legislation includes new regulations in the following five areas:

1. Nonattainment areas

Title I of the legislation extends deadlines and specifies control technologies for areas that have failed to comply with existing regulations on ozone, carbon monoxide, oxides of nitrogen, and particulates.

2. Mobile sources

Title II requires the reformulation of gasoline, mandates the introduction of special oxygenated fuels in certain areas, and changes emissions regulations.

3. Air toxics

Title III regulates the emission of toxic substances into the atmosphere. Most of these substances have not been subjected to previous environmental regulations.

4. Acid rain

Title IV provides market permits for the emission of sulfur dioxide and provides regulation of emissions of oxides of nitrogen.

5. Stratospheric ozone

Title IV implements the Montreal Protocol, an international agreement that provides for the elimination of CFC's (chlorofluoro-hydrocarbons).

Pollution control legislation began in earnest in the United States in 1965, when amendments to the Clean Air Act set national automobile emissions standards for the first time. The extent of regulation increased dramatically in 1970 with the passage of the National Environmental Policy Act and amendments to the Clean Air Act. In 1972 the Clean Water Act was passed and revisions to this Act and the Clean Air Act were adopted in 1977.[1] The consequence of this legislation was large and abrupt shift of economic resources toward pollution abatement.

The purpose of this paper is to quantify the impact of the Clean Air Act Amendments of 1990 and previous environmental legislation at the federal level on U.S. economic growth. We analyze the impact of environmental regulation by simulating the long term growth of the U.S. economy with and without regulation. For this purpose we have constructed a detailed model of the economy that includes the determinants of long run growth. Before considering the impact of specific pollution controls we present a brief overview of the model in Section 2. We focus on the impact of these controls on the cost of capital and the rate of capital and the rate of capital formation.

The possible responses of producers of new environmental regulations fall into three categories—substitution of less polluting inputs for more polluting ones, investment in pollution abatement devices to clean up wastes, and changes in production processes to reduce emissions. Switching toward cleaner inputs in the least disruptive of these responses, since it does not require a re-organization of the production process. A prime example is the substitution of low-sulfur coal for high-sulfur coal by electric utilities during the 1970's to comply with restrictions on sulfur dioxide emissions. Another important example is the shift from leaded to unleaded fuels for the purpose of cleaning up motor vehicle emissions.

The second response to emissions controls is the use of special devices to treat wastes after they have been generated. This is commonly known as end-of-pipe abatement and is frequently the method of choice for retrofitting existing facilities to meet newly imposed environmental standards. A typical example is the use of electrostatic precipitators to reduce emission of particulates from combustion. Regulations promulgated in the United States by the Environmental Protection Agency effectively encourage the use of this approach by setting standards for emissions on the basis of "best available technology".

Process changes involve redesigning production methods to reduce emissions. An example is the introduction of fluidized bed technology for combustion, which results in reduced emissions. Gollup and Roberts (1983) have constructed a detailed econometric model of electric utility firms, based on a cost function that incorporates the impact of environmental regulation on the cost of producing electricity and the rate of productivity growth. They conclude that annual productivity growth of electric utilities impacted by more restrictive emissions controls declined by .59 percentage points over the period 1974–1979. This is the result of switching technologies to meet new standards for sulfur dioxide emissions.

In section 3 we show that pollution abatement had emerged as a major claimant on the resources of the U.S. economy well before the Clean Air Act Amendments of 1990. The long run cost of environmental regulations enacted prior to 1990 was a reduction of

Footnotes at end of article.

2.59 percent in the level of the U.S. gross national product. This is more than ten percent of the share of total government purchases of goods and services in the national product during the period 1973–1985. Over this period the annual growth rate of the U.S. economy has been reduced by .191 percent. This is several times the reduction in growth estimated in previous studies.

Since the stringency of pollution control differs substantially among industries, we have also assessed the impact of environmental regulations on individual industries. We have analyzed the interactions among industries in order to quantify the full repercussions of these regulations. We find that pollution controls have had their most pronounced effects on chemicals, coal mining, motor vehicles, and primary processing industries—such as petroleum refining primary metals, and pulp and paper. For example, we find that the long run output of the automobile industry has been reduced by fifteen percent, mainly as a consequence of motor vehicle emission controls.

In section 4 we turn our attention to the economic impact of the Clean Air Act Amendments of 1990. Our analysis of the impact of earlier legislation incorporates detailed data from the Bureau of the Census on costs of compliance by businesses and households. To assess these costs for the 1990 Act we employ a preliminary set of estimates of costs for the year 2005 prepared by the Environmental Protection Agency (1991). The new legislation will be phased in gradually over fifteen years, so that these estimates reflect the costs of compliance after the new regulations are fully effective.

We estimate that the level of the U.S. gross national product will be reduced by an additional four-tenths of a percentage point by the year 2005 as a consequence of the burden on the economy imposed by the 1990 legislation. This burden will rise to almost half a percent of the national product by the year 2020, when the impact of the legislation on the growth of the U.S. economy will be complete. Although our estimates of impacts on individual industries are necessarily imprecise, it is already apparent that electric utilities and primary metals industries will be hard hit by the new legislation and that many other industries will bear a substantial additional burden as a consequence of the 1990 Act.

2. AN OVERVIEW OF THE MODEL

The purpose of our model of the U.S. economy is to analyze the impact of changes in environmental policy by simulating the long term growth of the economy with and without regulation. We begin by dividing the U.S. economy into business, household, government, and rest of the world sectors. Since environmental regulations differ substantially among industries, we sub-divide the business sector into the thirty-industries listed in Table 2.1. Each industry produces a primary product and many industries also produce one or more secondary products. Thirty-five commodity groups are represented in our model, each corresponding to the primary product of one of the industries listed in Table 2.1.

TABLE 2.1.—THE DEFINITIONS OF INDUSTRIES

Number	Description
1	Agriculture, forestry, and fisheries.
2	Metal mining.
3	Coal mining.
4	Crude petroleum and natural gas.
5	Nonmetallic mineral mining.
6	Construction.
7	Food and kindred products.
8	Tobacco manufactures.
9	Textile mill products.
10	Apparel and other textile products.
11	Lumber and wood products.
12	Furniture and fixtures.
13	Paper and allied products.
14	Printing and publishing.
15	Chemicals and allied products.
16	Petroleum refining.
17	Rubber and plastic products.
18	Leather and leather products.
19	Stone, clay, and glass products.
20	Primary metals.
21	Fabricated metal products.
22	Machinery, except electrical.
23	Electrical machinery.
24	Motor vehicles.
25	Other transportation equipment.
26	Instruments.
27	Miscellaneous manufacturing.
28	Transportation and warehousing.
29	Communication.
30	Electric utilities.
31	Gas utilities.
32	Trade.
33	Finance, insurance, and real estate.
34	Other services.
35	Government enterprises.

The total supply of each commodity group is provided by domestic production and imports from the rest of the world. This supply is divided between intermediate and final demands. Intermediate demands are inputs of the commodity into all thirty-five industries. Final demands include expenditures by the household and government sectors for consumption, purchases by the business and household sectors for investment, and exports to the rest of the world. Each industry utilizes inputs of capital and labor services and these services are also allocated to final demands. Noncompeting imports, commodities that are not produced domestically, are allocated in the same way as capital and labor services.

To implement our model we have constructed a consistent time series of inter-industry transactions tables for the U.S. economy, covering the period 1947–1985 on an annual basis.[2] These tables provide detailed information on production by each of the thirty-five industries in current and constant prices. The quantities of each commodity, including primary factors of production and noncompeting imports, are allocated to intermediate and final demands in a "use" table. The quantities of all commodities made by each industry are given in a "make" table. The "use" and "make" tables are presented diagrammatically in Figures 2.1 and 2.2; Table 2.2 provides definitions of the variables that occur in both tables.

[Figures 2.1 and 2.2 not reproducible in the RECORD.]

TABLE 2.2—MAKE AND USE TABLE VARIABLES

Category and variable	Description
Industry-Commodity Flows:	
U	Commodities Used by Industries (use table).
M	Commodities Made by Industries (make table).
Final Demand Columns:	
C	Personal Consumption.
I	Gross Private Domestic Investment.
G	Government Spending.
X	Exports.
M	Imports.
Value Added Rows:	
N	Noncompeting Imports.
K	Capital.
L	Labor.
T	Net Taxes.
R	Rest of the World.
Commodity and Industry Output:	
O	Commodity Output.
D	Industry Output.
Other Variables:	
B	Value Added Sold Directly to Final Demand.
V	Total Value Added.
F	Total Final Demand.

2.1. Producer behavior

The first problem in modeling producer behavior is to represent substitution among inputs. For this purpose we have constructed econometric models of demands for all inputs by each industry. We have identified inputs of capital and energy separately, since environmental regulations often require the use of specific types of equipment or restrict the combustion of certain types of fuels. For example, a restriction in sulfur dioxide emissions may require the substitution of low-sulfur for high-sulfur fuel. Similarly, regulations on particulate emissions may necessitate the use of an electrostatic precipitator, which requires additional capital inputs.

The econometric approach to modeling producer behavior is very demanding in terms of data requirements.[3] An alternative approach is to characterize substitution among inputs by calibration from a single data point. The ratio of the input of each commodity to the output of an industry is calculated from a single "use" table, like the one presented in Figure 2.1. Often, the possibility of substitution among intermediate goods, such as energy and materials, is ruled out by assumption.

A high degree of substitutability among inputs implies that the cost of environmental regulation is low, while a low degree of substitutability implies high costs of environmental regulations. Although a calibration approach avoids the burden of estimation, it also specifies the nature of substitutability among inputs by assumption rather than relying on empirical evidence. This defeats the main purpose of modeling the impact of environmental policy. We conclude that empirical evidence on substitutability among inputs is essential in analyzing the impact of environmental regulations.

The most important mechanisms for control of environmental pollution are to induce substitution away from polluting inputs and require pollution abatement. These measures can affect the rate of productivity growth in an industry. If the level of productivity in an industry increases, the price of the output of the industry will fall relative to the prices of its inputs, while a decrease in the industry's productivity level will result in a rise in the price of its output relative to its input prices. Our models of producer behavior endogenize productivity growth by representing the rate of productivity growth in each industry as a function of the prices of all its inputs.[4]

Our econometric models of producer behavior allocate the value of the output of each industry among the inputs of the thirty-five commodity groups, capital services, labor services, and noncompeting imports. Inputs of the thirty-five commodities into each industry are given in the columns denoted U in the "use" table presented in Figure 2.1. Inputs of capital and labor services and noncompeting imports into all industries are given in the rows denoted K, L and N in the "use" table. The remaining rows of this table give indirect taxes paid by all industries and inputs of factor services from the rest of the world into these industries.

The sum of all entries in each column of the "use" table is the value of the output of the corresponding industry. This output includes a primary product and, possibly, one or more secondary products. We model the shares of all industries that produce a given commodity in the value of the total domestic production of that commodity as functions of the output prices of these industries. We use these value shares to allocate the do-

mestic supply of each commodity among the industries that produce it. This allocation is given in the columns of the "make" table in Figure 2.2. Similarly, we model the value shares of imports and domestic production of each commodity and employ these shares in generating the imports of each commodity in the column denoted M in the "use" table, Figure 2.1.[5]

In our model of the U.S. economy there is a single stock of capital that is allocated among all sectors, including the household sector. The supply of capital available in each period is the result of past investment. This relationship is represented in an accumulation equation that gives capital at the end of each period as a function of investment during the period and capital at the beginning of the period. This equation is backward-looking and captures the impact of investments in all past periods on the capital available in the current period. We assume that capital is perfectly malleable and mobile among sectors, so that the price of capital services in each sector is proportional to a single capital service price for the economy as a whole. The value of capital services is equal to capital income.

Our model of producer behavior includes an equation giving the price of capital services in terms of the price of investment goods at the beginning and end of each period, the rate of return to capital for the economy as a whole, the rate of depreciation, and variables describing the tax structure for income from capital. The current price of investment goods incorporates expectations about all future prices of capital services and all future discount rates.[6] Our model of the U.S. economy includes this forward-looking relationship for the price of investment goods in each time period. The price of capital services determined by the model enters into the price of investment goods through the assumption of perfect foresight or rational expectations. Under this assumption the price of investment goods in every period is based on expectations of future capital service prices and discount rates that are fulfilled by the solution of the model.

The final demands for commodity groups in our model include purchases by the business and household sectors for investment purposes. The final set of behavioral equations in our model of producer behavior is a system of demand functions for investment goods. We model the value shares all commodities accumulated by the business and household sectors—including producers' and consumers' durable, residential and nonresidential structures, and inventions—as functions of the prices of these commodities. The shares are used to allocate the value of investment goods among commodity groups, as in the column denoted I in the "use" table, Figure 2.1.

2.2. Consumer behavior

An important objective of environmental regulation is to induce the substitution of nonpolluting products for polluting ones. This substitution can take place within the household sector as well as the business sector. For example, regulations on exhaust emissions of motor vehicles affect household demands for vehicles and motor fuel. The first problem in modeling consumer behavior is to represent substitution among commodities that are purchased by households. For this purpose we have constructed an econometric model of demands for individual commodities by the household sector. As in our models of producer behavior, we identify purchases of energy and capital services separately, since these commodity groups are directly affected by environmental regulation.[7]

Our model of consumer behavior allocates personal consumption expenditures among the thirty-five commodity groups included in our model of the U.S. economy, capital and labor services, and noncompeting imports. The allocation to individual commodities is given in the column denoted C in the "use" table, Figure 2.1. Our model of personal consumption expenditures can be used to represent the behavior of individual households, as in the studies of regulatory policy by Jorgenson and Slesnick (1985). Here we employ the model to represent aggregate consumer behavior in simulations of the U.S. economy under alternative policies for environmental regulation. For this purpose we imbed this model of personal consumption expenditures into a higher-level model that determines consumer choices between labor and leisure and between consumption and saving.

The second stage of our model of the household sector is based on the concept of full consumption, which is composed of goods and services and leisure time. We simplify the representation of household preferences between goods and leisure by introducing the notion of a representative consumer. In each time period the representative consumer allocates the value of full consumption between personal consumption expenditures and leisure time.[8] This produces an allocation of the exogenously given time endowment between leisure time and the labor market. Labor market time is allocated among the thirty-five industries represented in the model and final demands for personal consumption expenditures and government consumption. We assume that labor is perfectly mobile among sectors, so that the price of labor services in each is proportional to a single wage rate for the economy as a whole. The value of time allocated to the labor market is equal to labor income.

The third and final stage of our model of the household sector is a model of intertemporal consumer behavior. We describe intertemporal preferences by means of a utility function for a representative consumer that depends on levels of full consumption in current and future time periods. The representative consumer maximizes this utility function, subject to an intertemporal budget constraint. The budget constraint gives full wealth as the discounted value of current and future full consumption. The necessary conditions for a maximum of the utility function, subject to the budget constraint, can be expressed in the form of an Euler equation, giving the rate of growth of full consumption as a function of the discount rate and the rate of growth of the price of full consumption.[9]

The Euler equation for full consumption is forward-looking, so that the current level of full consumption incorporates expectations about future prices of full consumption and future discount rates. The solution of our model includes this forward-looking relationship for full consumption in each time period. The price of full consumption determined by the model enters full consumption through the assumption of perfect foresight or rational expectations. Under this assumption full consumption in every period is based on expectations about future prices of full consumption and discount rates that are fulfilled by the solution of the model.

2.3. Solution of the model

We conclude this overview by outlining the solution of our model of the U.S. economy. An intertemporal sub-model incorporates backward-looking and forward-looking equations that determine time paths of capital stock and full consumption. Given the values of these variables, an intratemporal submodel determines prices that balance demand and supply in each time period for the thirty-five commodity groups included in the model, capital services, and labor services. These two sub-models must be solved simultaneously to obtain a complete solution of the model.

The dynamics of adjustment of changes in environmental policy are determined by the intertemporal features our model of the U.S. economy. For example, investment in equipment for pollution abatement has been a very substantial proportion of investment in producers' durable equipment during parts of our sample period, 1947–1985. This mandated investment has increased the price of investment goods, requiring adjustments of capital service prices and discount rates over the whole future time path of the economy. Reductions in investment for capital accumulation have reduced the capital available for production in subsequent time periods.

To construct a solution to our model of the U.S. economy we first require values of all the exogenous variables. These variables are set equal to their historical values for the sample period, 1947–1985. We project all the exogenous variables for the post-sample period, 1986–2050, and take these variables to be constant at their 2050 values through the year 2100. The exogenous variables are held constant over the period 2050–2100 to allow sufficient time for the endogenous variables determined by the model to converge to their steady state values.

The most important exogenous variables in our model of the U.S. economy are those associated with the U.S. population and the corresponding time endowment. We project population by individual year of age, individual year of educational attainment, and sex to the year 2050, using demographic assumptions that result in a maximum population in that year.[10] In projecting future levels of educational attainment we assume that future demographic cohorts will have the same level of attainment as the cohort reaching age 35 in the year 1985. We transform our population projection into a projection of the time endowment used in our model of the labor market by assuming that the relative wages are constant at 1985 levels.

The size of the economy corresponding to the steady state of our model is effectively determined by the time endowment. Capital stock adjusts to this time endowment, while the rate of return depends only on the intertemporal preferences of the household sector. In this sense the supply of capital is perfectly elastic in the long run. It is useful to contrast the behavior of our model with that of a neo-classical growth model of the Cass-Koopmans type.[11] For example, the rate of return in the stationary solution of our model is independent of environmental policy, just as in a one-sector neo-classical growth model. However, different policies result in different levels of capital intensity—all corresponding to the same rate of return. This is impossible in a one-sector model.

[8] The price of leisure time is equal to the market wage rate, reduced by the marginal tax rate on labor income, which is the opportunity cost of foregone labor income. The price of personal consumption expenditures is a cost of living index, generated from the first stage of our model of consumer behavior. This cost of living index is discussed by Jorgenson and Slesnick (1983).

[9] The Euler equation approach to modeling intertemporal consumer behavior was originated by Hall (1978). Our application of this approach to full consumption follows Jorgenson and Yun (1986).

In the short run the supply of capital in our model of the U.S. economy is perfectly inelastic, since it is completely determined by past investment. Under our assumption of perfect mobility of capital and labor, changes in environmental policy can affect the distribution of capital and labor supplies among sectors, even in the short run. The transition path for the economy depends on environmental policy. It also depends on the time path of variables that are exogenous to the model. If the initial wealth of the economy is low relative to the time endowment, the rate of return will exceed the stationary rate of return. This will induce the representative consumer to postpone consumption of goods and leisure into the future, so that the rate of capital accumulation will be positive. Conversely, if the initial wealth of the economy is sufficiently high relative to the time endowment, the rate of capital accumulation will be negative.

3. THE IMPACT OF ENVIRONMENTAL LEGISLATION ENACTED BEFORE 1990

Our next objective is to assess the impact of environmental regulation by projecting the growth of the U.S. economy with and without regulation. The base case for our simulations is a regime with pollution controls embodied in legislation enacted before 1990 in effect. To determine the impact of these environmental restrictions on economic activity, we simulate U.S. economic growth in the absence of regulation. We perform separate simulations to assess the impact of pollution control in industry and controls on motor vehicle emissions, which also affect the consumption behavior of households. We then estimate the overall impact of environmental regulation by eliminating both types of pollution control.

Simulations of the U.S. economy in which pollution controls are removed differ from the base case in the steady state, the initial equilibrium, and the transition path between the two. Since capital stock is endogenous in our model, the new steady state corresponds to the long run impact of environmental regulation on the U.S. economy. The initial equilibrium with capital stock fixed gives the short run impact of a change in environmental policy. Since agents in the model are endowed with perfect foresight, this initial equilibrium reflects changes along the entire time path of future regulatory policy. Finally, the transition path between the initial equilibrium and the steady state traces out the dynamics of the adjustment of the economy to a new policy for environmental regulation.

In presenting the results of our simulations of U.S. economic growth we begin by quantifying the impact of pollution controls on production costs. We then incorporate the changes in costs into our model of the U.S. economy. We first consider the impact of environmental regulations on the steady state of the economy. For this purpose we focus attention on a few key variables. Capital stock determines the production capacity of the economy, since the time endowment is given exogenously. Full consumption is a measure of the goods and services and leisure time available to the household sector. The level of the gross national product is an overall measure of the output of the economy, including private and public consumption, investment, and net exports to the rest of the world. Finally, the exchange rate is an indicator of the international competitiveness of the U.S. economy.

The second step in our analysis of the impact of environmental regulation is to analyze the transition path of the U.S. economy from the initial equilibrium to the new steady state. We describe the time path of capital stock as the most important indicator of the process of economic adjustment to a change in environmental policy. The price of investment goods is an important determinant of the time path of capital stock, since it incorporates expectations about future prices of capital services and discount rates. The rental price of capital services also reflects the rate of return, which is critical to the allocation of the national income between consumption and savings. We employ the time paths of capital stock, the price of investment goods, the price of capital services, and the level of GNP in describing the adjustment process.

3.1. Operating costs

We have used data collected by the Bureau of the Census (various annual issues) to estimate investment in pollution abatement equipment and operating costs of pollution control activities for manufacturing industries.[12] The investment data give capital expenditures on pollution abatement equipment in current prices, while data on operating costs give current outlays attributable to pollution control. These are the actual costs reported by the business sector and do not include taxes levied as part of the Superfund program. Taxes amounting to more than a billion dollars a year were placed on the petroleum refining and chemicals industries in 1981 and the primary metals industry in 1986. These may have had a substantial impact on U.S. economic growth, but we do not examine their consequences in this paper.

[Figure 3.1 not reproducible in the RECORD.]

Figure 3.1 summarizes the share of pollution abatement in industry costs, the share of individual industries in total abatement costs, and the share of abatement devices in industry investment for the manufacturing industries. Inspection of the first panel shows that pollution control expenses form only a small part of total costs for individual industries. The largest share is for the primary metals industry at slightly more than two percent. Second, the expenses for pollution abatement are concentrated in a relatively small number of industries. Three sectors—chemicals, petroleum refining, and primary metals—account for fifty-five percent of total spending. Third, investment in pollution abatement equipment consumes more than twenty percent of total investment for paper and pulp, petroleum refining, and primary metals industries.

Our first step in eliminating the operating costs of pollution control is to estimate the share of pollution abatement in the total costs of each industry. The 1983 cost shares are a maximum for the period, 1973–1983, since pollution controls have increased steadily over the period. We assume that shares for later years are constant at the 1983 values. Data for industries outside manufacturing were available only for electric utilities and wastewater treatment, which is part of the services industry. For both industries, data on operating costs and investment expenditures for pollution abatement have been compiled by the Bureau of Economic Analysis. We have estimated the proportion of operating costs devoted to pollution abatement for these industries.[13]

Additional information on the impact of environmental regulation on costs is available for electric utilities, namely, the extra costs of burning low-sulfur fuels. Switching from high-sulfur to low-sulfur coal changes the relative proportions of the two products in the output of the coal industry. Since low-sulfur coal is more expensive, this increases the price of coal. Eliminating regulations on sulfur emissions would lower the price of coal by permitting substitution toward high-sulfur grades. We model the impact of lifting these emissions controls by subtracting the differential between high cost and low cost coal from the costs of coal production.[14] Including the coal industry, a total of twenty industries is subject to pollution abatement regulations.

The long run impact of eliminating the operating costs of pollution abatement is summarized in the column labeled ENV in Table 3.1. The output of the economy, as measured by the real gross national product, is raised by .728 percent.

TABLE 3.2.—THE EFFECTS OF REMOVING ENVIRONMENTAL REGULATION

Variable	Percentage change in steady state			
	ENV	INV	MV	ALL
Capital stock	0.544	2.266	1.118	3.792
Price of investment goods	−.897	−2.652	−1.323	−4.520
Full consumption	.278	.489	.282	.975
Real GNP	.728	1.290	.752	2.592
Rental price of capital	−.907	−2.730	−1.358	−4.635
Exchange rate	−.703	−.462	−.392	−1.298

The capital stock rises by .544 percent. Since our model of the U.S. economy has a perfectly elastic supply of savings in the long run, the rate of return is unaffected by regulation. However, the price of investment goods, which also reflects capital service prices, falls by .897 percent. The price of capital services declines by .907 percent, almost the same as the price of investment goods. The resulting decrease in the prices of goods and services produces a rise in full consumption of .278 percent. This increase is less than that of the national product, since full consumption includes leisure time as well as personal consumption expenditures. Finally, the exchange rate, which gives the domestic cost of foreign goods, falls slightly, indicating an increase in the international competitiveness of the U.S. economy.[15]

The long run effects of eliminating operating costs associated with pollution abatement on the prices and outputs of individual industries are shown in Figure 3.2.

[Figure 3.2 not reproducible in the RECORD.]

The bars in the first panel indicate the percentage change in the steady output price of the corresponding industry. The bars in the second panel give percentage changes in industry output levels. Not surprisingly, the principal beneficiaries of the elimination of operating costs are the most heavily regulated industries. The greatest expansion of output occurs in coal production, since the fuel cost differential between low-sulfur and high-sulfur coal is large relative to the total costs of the coal industry. Turning to manufacturing industries, the primary metals, paper, and chemicals industries have the largest gains in output from the elimination of operating costs for pollution abatement. Several other sectors benefit from the removal of operating costs of pollution abatement, but the impact is fairly modest.

We have now summarized the long run impact of eliminating operating costs associated with pollution controls in industry. In Figure 3.3 we analyze the dynamics of the process of adjustment to lower costs.

[Figure 3.3 not reproducible in the RECORD.]

After 1973 the price of investment goods falls slowly, reflecting the gradual price decline brought about by the elimination of op-

erating costs associated with increasingly stringent regulations. Lower costs of investment goods tend to increase the rate of return, stimulate savings, and produce more rapid capital accumulation. Additional capital eventually brings down the rental price of capital, lowering costs still further. Finally, the quantity of full consumption rises rapidly to the new steady state level and remains there.

The transition from the short run to the steady state is relatively slow, requiring almost three decades for capital stock and the price of capital services to adjust fully to the change in environmental policy. The graph of capital stock shows that the process of adjustment is not complete until the year 2000. This reflects the nature of our simulation experiment. The regulations are imposed gradually, so that their removal is also gradual. On the other hand, full consumption attains its final value more quickly as a consequence of intertemporal optimization by households under perfect foresight. Since income is permanently higher in the future, consumption rises in anticipation. However, the rise of consumption is dampened by an increase in the rate of return that produces greater investment.

3.2. Investment in pollution control equipment

The most important impact of environmental regulation for some industries is the imposition of requirements for investment in costly new equipment for pollution abatement. Investment in pollution control devices crowds out investment for capital accumulation, further reducing the rate of economic growth. Our second simulation of U.S. economic growth is designed to assess the impact of investment for pollution control. An examination of the data on investment presented in Figure 3.1 reveals several striking features. First, the paper, petroleum refining, and primary metals industries each spent more than twenty percent of their total investment on pollution control devices in 1975. Some other sectors were not far behind and the overall share of this investment in total gross private domestic investment was substantial.

The share of investment for pollution abatement rose to a peak in the early 1970's and then declined substantially. This can be attributed to the fact that much of the early effort at pollution control was directed at reducing emissions from existing sources by retrofitting equipment already in place. The appropriate method for modeling mandatory investment in pollution control requires a distinction between achieving environmental standards for existing sources of emissions and meeting restrictions on new sources of emissions. Environmental regulations increase the cost of new investments, since producers are required to purchase pollution abatement equipment whenever they acquire new investment goods.

We assume that investment in pollution control equipment provides no benefits to the producer other than satisfying environmental regulations. Accordingly, we simulate mandated investment as an increase in the price of investment goods. Unfortunately, the existing data do not provide a separation between investments required for new and existing facilities. We assume that the backlog of investment for retrofitting old sources of emissions had been eliminated by 1983. We simulate the impact of removing environmental regulations on investment by reducing the price of investment goods by the proportion of total investment attributable to pollution control for 1983. This captures the effect of requirements for pollution abatement on investment in new capital goods, but does not include the effect of windfall losses to owners of the capital associated with old sources of emissions.

Our method for simulating the impact of investment requirements for pollution control has certain limitations that should be pointed out. First, it relies on the assumption that capital is completely malleable and mobile between sectors. An alternative approach would be to incorporate costs of adjustment into our models of producer behavior. However, this approach would lead to considerable additional complexity in modeling and simulating producer behavior. The long run impact of environmental regulations would be unaffected by costs of adjustment, since these costs would be zero in the steady state of our model.

The steady state effects of mandated investment in pollution control devices are given in the column labeled INV in Table 3.1. The largest change is in the capital stock, which rises by 2.266 percent as a direct result of the drop in the price of investment goods. In the short run this price decline pushes up the rate of return, raising the level of investment. Higher capital accumulation leads to a fall in the rental price of capital services, decreasing the overall price level. The long run level of full consumption rises by .489 percent, almost double the increase resulting from eliminating operating costs of pollution abatement. The 1.290 percent rise in GNP is also nearly twice as large. The exchange rate appreciates by .462 percent, indicating an increase in international competitiveness of the U.S. economy.

The effects of eliminating pollution abatement investment on industry output and price levels are shown in Figure 3.4.

[Figure 3.4 not reproducible in the RECORD.]

These effects stem from the drop in the rental price of capital services. The largest gains in output are for communications, electric utilities, and gas utilities, since these are the most capital intensive industries. While most sectors gain from eliminating investment for pollution control, a few sectors are hurt by this change in environmental policy. Outputs of food, apparel, rubber and plastic, and leather all decline noticeably. These sectors are among the least capital intensive, so that the fall in the rental price of capital services has little effect on the prices of outputs. Buyers of the commodities produced by these industries face higher prices and substitute other commodities in both intermediate and final demand.

The transition path of the U.S. economy after investment requirements for pollution control have been eliminated is summarized in Figure 3.5.

[Figure 3.5 not reproducible in the RECORD.]

The process of adjustment is markedly different from that of the previous simulation. Capital stock grows immediately and rapidly to its new equilibrium value. This comes about as a consequence of the fall in the price of investment goods. As new capital goods become cheaper, beginning in 1973, the rate of return rises, driving up investment and producing a sharp increase in the capital stock. This explanation is further substantiated by the behavior of full consumption. Initially, consumption drops and a larger share of income is diverted to investment. Then, as the capital stock rises, so does consumption. The path of the rental price reflects the behavior of the capital stock and drives output prices downward as more capital is accumulated.

3.3. Motor vehicle emissions control

Environmental regulation is not limited to controlling emissions by industries within the business sector. Regulations on motor vehicle emissions affect users of motor vehicles, including households as well as businesses. Motor vehicle regulation is set apart from other forms of environmental control by the fact that the pollution abatement equipment is installed by the manufacturer. Like pollution control in industry, the reduction of motor vehicle exhaust emissions adds to both capital expenditures and operating costs. The catalytic converter is a typical piece of pollution abatement equipment requiring capital expenditures. The premium paid for unleaded gasoline represents an increase in operating costs.

Using data obtained from Kappler and Rutledge (1985), we have estimated the change in motor vehicle prices resulting from emission control regulations. Pollution abatement also imposes additional operating costs on users of motor vehicles. Kappler and Rutledge have separated these additional expenses into three components—increased fuel consumption, increased fuel prices, and increased motor vehicle maintenance. We first divide the total cost of pollution abatement equipment between imported and domestic vehicles in proportion to their shares in total supply. We exclude the cost of this equipment from the total cost of domestic production of motor vehicles. We reduce the price of motor vehicles in proportion to the cost of pollution control devices to simulate the impact of eliminating controls on motor vehicle emissions.

The price premium for unleaded motor fuels can be modeled as a change in the cost of output of the petroleum refining sector. This is similar to the treatment of the fuel cost differential between high-sulfur and low-sulfur coal used in our simulations of the impact of pollution abatement in industry. Only the costs associated with higher fuel prices were removed in our simulation of U.S. economic growth without motor vehicle emissions controls. Consequently, our results understate the impact of these controls. To complete the inputs to our simulation of U.S. economic growth in the absence of controls on motor vehicles emissions we reduce the price of imported motor vehicles in the same proportion as the price of domestic vehicles.

The economic impact of imposing emissions controls on motor vehicles is similar in magnitude to the impact of pollution controls in industry. The long run capital stock rises by 1.118 percent after the elimination of controls on emissions, while full consumption increases by .282 percent. Real GNP increases by .752 percent in the absence of controls. Finally, the exchange rate appreciates by .392 percent. These results are summarized in the column labeled MV in Table 3.1. Almost all of the economic impact is due to decreased motor vehicle prices as a consequence of the absence of emissions controls. Changes in the price of investment goods raise the rate of return, leading to large changes in the capital stock. The price of investment goods changes substantially, since motor vehicles make up nearly fifteen percent of new capital goods.

The long run impact of eliminating motor vehicle emissions controls on the outputs and prices of individual industries is shown in Figure 3.6.

[Figure 3.6 not reproducible in the RECORD.]

The principal beneficiary of the elimination of these regulations is the motor ve-

hicles industry. This is partly due to the fact that the demand for motor vehicles is price elastic. A price change of seven percent produces an output change of fourteen percent. Two other industries also benefit significantly from elimination of environmental controls—petroleum refining and electric utilities. Both gain from the reduction in fuel prices associated with elimination of the fuel price premium.

The process of adjustment to a change in controls on motor vehicle emissions is shown for key variables of the model in Figure 3.7.

[Figure 3.7 not reproducible in the RECORD.]

The important features of this path are similar to those for the removal of pollution abatement investment in industry. Vehicles are a large part of investment, so that lowering their price brings down the cost of new capital goods substantially. This increases the rate of return, stimulates saving, and leads to a surge in investment. Since the change in vehicle prices is largest in later years, however, the effect is more gradual and the capital stock does not climb as rapidly.

3.4. The impact of environmental regulation

To measure the total impact of eliminating all three costs of environmental regulation—operating costs resulting from pollution abatement in industry, costs of investments required by industry to meet environmental standards, and costs of emissions controls on motor vehicles—we have performed a final simulation. This simulation is not a simple combination of its three components. Operating costs include capital costs, so that combining the reductions in operating costs with the elimination of investment requirements would count the cost reductions associated with capital twice. To solve this problem, the capital component was removed from operating costs in the combined simulation. The results of removing all forms of environmental regulation are summarized in Table 3.1, together with the results of the previous simulations.

The long run consequences of pollution control for different industries are presented in Figure 3.8.

[Figure 3.8 not reproducible in the RECORD].

The sectors hit hardest by environmental regulations are the motor vehicles and coal mining industries. Primary metals and petroleum refining follow close behind. About half the remaining industries have increases in output of one to five percent after pollution controls are removed. The rest are largely unaffected by environmental regulations. The economy follows the transition path to the new steady state shown in Figure 3.9.

[Figure 3.9 not reproducible in the RECORD].

Driven by large changes in the price of investment goods, the capital stock rises sharply. The quantity of full consumption rises at a similar rate, as does real GNP. The adjustment process is dominated by the rapid accumulation of capital and is largely completed within two decades.

3.5. Summary

We can summarize the impact of environmental regulation by analyzing the effects on the growth of GNP over the period 1973–1985. These effects are given in Table 3.2. Mandated investment in pollution control equipment has the largest impact, while motor vehicle emissions control is not far behind. The added operating costs due to pollution abatement play a minor role in the growth slowdown. The three types of environmental regulation together are responsible for a drop in GNP growth of .191 percentage points.

A number of studies have attempted to measure the effect of pollution control on productivity and economic growth.[16] For example, Denison (1985) finds that the growth rate of the U.S. economy was reduced by only .07 percentage points over the period 1973–1982 due to pollution controls. This estimate is based on an aggregate production function and does not take in account the important differences in environmental restrictions among industries. In addition, Denison does not model the dynamic response of the U.S. economy to pollution controls. Our model incorporates differences among industries in pollution abatement and captures the effect of environmental costs on the rate of capital formation. Accordingly, our estimate of the impact of environmental regulation on U.S. economic growth is several times that of Denison.

We can also summarize the impact of higher operating costs associated with environmental regulation on economic growth, using the results given in Table 3.2. U.S. economic growth would have been .034 percentage points higher during the period 1973–1985 in the absence of the operating costs resulting from environmental regulation. These operating costs had a small but significant effect on long run output and the rate of growth of the economy in the 1970's and early 1980's. In addition, these costs affect the distribution of economic activity with industries such as primary metals experiencing a considerable drop in output. However, operating costs arising from pollution abatement are not the only effects of environmental regulation.

Summary of the effects on growth over 1974–85

Simulation:	*Change in growth rate*
Operating costs	0.034
Investment	.074
Old source investment	.026
Motor vehicles	.051
All effects	.191

The impact of pollution abatement investment on the rate of GNP growth during the period 1973–1985 is also given in Table 3.2. The growth of GNP would have been .074 percentage points higher in the absence of mandated investment in pollution control. Slower productivity growth contributed .015 percentage points to this total, while the rest results from slower growth of the primary factors of production. Mandated investment in pollution control has two effects. First, it lowers the long run capital stock and reduces long run consumption. Second, it reduces the rate of capital accumulation in the early years of regulation. This reduces the rate of growth of GNP. The impact of eliminating mandated investment in pollution abatement devices is substantially larger than that of eliminating operating costs.

The dampening effect of investment for pollution control on capital accumulation is exacerbated by the investment required to bring existing sources of emissions into compliance with environmental standards. We have taken the share of investment attributable to new investment goods as the 1983 share. The difference between the actual shares in earlier years and the 1983 share gives the proportion devoted to existing sources of emissions. The data presented in Figure 3.4 above show that this expenditure reached as much as three percent of total investment during the mid-1970's.

We have modified our simulation of U.S. economic growth to assess the importance of mandated investment in pollution abatement equipment for existing sources of emissions. For this purpose we have increased the level of investment expenditures from 1973 to 1983 by the share attributable to pollution abatement for existing sources. This raises the rate of capital accumulation in the mid-1970's, but there is no long run effect on economic growth. Eliminating investment in pollution control devices for both new and existing sources raises the average rate of growth during the period 1973–1985 by .100 percentage points. We have estimated an increase in the growth rate of .074 percentage points for the investment required for new sources alone, so that we can attribute an increase of .026 points to the investment required to bring existing sources into compliance.

Finally, the rate of growth of the U.S. national product over the period 1973–1985 would have been .051 percentage points higher in the absence of motor vehicle emissions controls. This is a surprisingly large effect. It is nearly twice as large as the gain from eliminating mandatory investments for bringing existing sources of emissions into compliance with environmental standards and about half as large as removing all operating costs and all investment requirements for pollution control in industry.

4. THE IMPACT OF THE CLEAN AIR ACT AMENDMENTS OF 1990

Our final objective is to analyze the impact of the Clean Air Act Amendments of 1990. For this purpose we proceed, as in Section 3, by projecting the growth of the U.S. economy with and without the 1990 legislation. The base case is the same as the one we have employed in Section 3. In this base case all pollution controls resulting from legislation enacted before 1990 are in effect. We project the growth of the U.S. economy without the 1990 legislation. We then incorporate estimates of the costs of compliance with this legislation into our projections. Finally, we compare growth of the U.S. economy with and without the 1990 legislation.

To quantify the impact of the Clean Air Act Amendments of 1990 on U.S. economic growth, we begin with estimates of the cost of compliance with this legislation in the year 2005 prepared by the Environmental Protection Agency (1991). We employ the year 2005 as a point of reference, since the provisions of the 1990 legislation will be phased in gradually over a fifteen year period. By the end of this period in 2005 the pollution controls embodied in the 1990 legislation are fully effective. The overall costs of compliance for the year 2005 is $24 billions in prices of 1990.

We have already pointed out that the provisions of the Clean Air Act Amendments of 1990 are divided among eleven separate "titles" of the Act. The Environmental Protection Agency (1991) has prepared separate estimates of costs of compliance for five separate programs. About half the costs in the year 2005, $12.2 billions in prices of 1990, are associated with Title I, which extends deadlines and specifies control technologies for areas which have failed to comply with existing regulations on emissions of ozone, carbon monoxide, oxides of nitrogen, and particulates. Since we do not have information on the distribution of these costs by industry, we have allocated them to the manufacturing industries in proportion to costs of compliance in the latest year for which data are available, which is 1988.

Of the remaining titles of the 1990 legislation, Title IV deals with acid rain. We have allocated the estimated costs for the year

2005, $3.6 billions in prices of 1990, to electric utilities. Title V provides for marketable permits for emissions of sulfur dioxide and regulates emissions of oxides of nitrogen. Title III regulates emissions of toxic substances into the atomsphere. Title VIII provides for miscellaneous additional regulations. The corresponding costs are $0.2 billions, $7.9 billions, and $0.1 billions, respectively, all in prices of 1990. We have allocated these costs to manufacturing industries in proportion to their total costs of compliance in 1988.

We have estimated the ratio of costs of compliance for the year 2005 for each industry to the value of the output of that industry in our base case. We have simulated U.S. economic growth with industry costs that include these costs of compliance. To reflect the fact that costs of compliance will increase gradually as the new regulations are implemented, we increase the costs of compliance linearly, beginning with a value of zero in 1990 and rising to the 2005 levels. Obviously the allocation of costs of compliance among programs included in the 1990 legislation, the distribution of these costs among industries, and the time phasing of the introduction of the new pollution controls can be further refined.

We have simulated the growth of the U.S. economy with and without the costs of compliance associated with the Clean Air Act Amendments of 1990. We present the impact of this legislation on individual industries in the year 2005 in Figure 4.1. The sectors most affected by the new pollution controls are electric utilities and primary metals. The output of electric utilities is reduced by three percent, while that of primary metals is reduced by 3.5 percent. To provide estimates of a long run impact, like those presented for earlier legislation in Section 3, we provide industry impacts in the year 2020 in Figure 4.2. Again, primary metals and electric utilities stand out as the industries most heavily affected by the 1990 legislation.

[Figures 4.1, 4.2, and 4.3 not reproducible in the RECORD.]

The U.S. economy follows the transition path presented in Figure 4.3 in adjusting to a new steady state. The initial impact of the legislation on the gross national product is positive, since there is a short run surge of investment to take advantage of lower prices of investment goods before the full impact of the legislation works its way through the economy. This surge in investment is over by the year 2000. The capital stock gradually falls as new pollution controls take hold, raising the price of capital goods. The rental price or cost of capital rises, reaching a level about 0.6 percent higher than the base case by the year 2020. The adjustment process reflects the forward-looking character of expectations about future prices of assets and future rates of return.

We find that the Clean Air Act Amendments will impose substantial costs on U.S. industries over the period 1990–2005, as the new pollution controls are implemented. These costs repesent a net addition of about one-fifth to costs of compliance associated with previous legislation. The U.S. economy adapts itself to these costs of compliance through an upward adjustment in the prices of capital goods. This increases the rental price or cost of capital and reduces the level of the capital stock. This generates a reduced rate of capital formation.

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FOOTNOTES

[1] A detailed survey of U.S. environmental policy is presented by Christiansen and Tietenberg (1985).

[2] Data on inter-industry transactions are based on input-output tables for the U.S. constructed by the Bureau of Economic Analysis (1984). Income data are from the U.S. national income and product accounts, also developed by the Bureau of Economic Analysis (1986). The data on capital and labor services are based on those of Jorgenson, Gollop, and Fraumeni (1987). Our data are organized in an accounting system based on the United Nations (1968) system of national accounts. Details are given by Wilcoxen (1988), Appendix C.

[3] The econometric approach is reviewed by Jorgenson (1982, 1984). This approach has also been employed by Hazilla and Kopp (1990).

[4] Our approach to endogenous productivity growth was originated by Jorgenson and Fraumeni (1981). The implementation of a general equilibrium model of production that incorporates both substitution among inputs and endogenous productivity growth is discussed by Jorgenson (1984, 1986). This model has been analyzed in detail by Hogan and Jorgenson (1991).

[5] This approach was originated by Armington (1969).

[6] Forther details are given by Jorgenson (1989).

[7] The econometric methodology employed in our study was originated by Jorgenson, Lau, and Stoker (1982). The econometric model we have employed was constructed by Jorgenson and Slesnick (1987). Further details on the econometric methodology are given by Jorgenson (1984, 1990).

[8] The price of leisure time is equal to the market wage rate, reduced by the marginal tax rate on labor income, which is the opportunity cost of foregone labor income. The price of personal consumption expenditures is a cost of living index, generated from the first stage of our model of consumer behavior. This cost of living index is discussed by Jorgenson and Slesnick (1983).

[9] The Euler equation approach to modeling intertemporal consumer behavior was originated by Hall (1978). Our application of this approach to full consumption follows Jorgenson and Yun (1986).

[10] Our breakdown of the U.S. population by age, educational attainment, and sex is based on the system of demographic accounts complied by Jorgenson and Fraumeni (1989). The population projections are discussed in detail by Wilcoxen (1988), Appendix B.

[11] The model was originated by Cass (1965) and Koopmans (1967). The Cass-Koopmans model has recently been discussed by Lucas (1988) and Romer (1989). Neo-classical growth models with pollution abatement have been presented by Maler (1975) and Uzawa (1975).

[12] A detailed description of the data is given by Wilcoxen (1968), Appendix D.

[13] Details are given by Wilcoxen (1988), Appendix D.

[14] Details of our methodology for estimating cost differentials between high-sulfur and low-sulfur coal are given by Wilcoxen (1988), Appendix D.

[15] An alternative analysis of the impact of environmental regulation on U.S. international competitiveness is given by Kalt (1988).

[16] A detailed survey of studies of the impact of environmental regulation on productivity and economic growth in the United States is presented by Christiansen and Tietenberg (1985).

APPOINTMENT OF CONFEREES

The PRESIDING OFFICER. Pursuant to the order of November 12, 1991, the Chair appoints the following Senators to serve as conferees on H.R. 2967, the Older Americans Act amendments of 1991.

The PRESIDING OFFICER appointed, from the Committee on Labor and Human Resources, Mr. KENNEDY, Mr. METZENBAUM, Mr. ADAMS, Mr. HATCH, and Mr. COCHRAN; from the Committee on Finance (solely for the Social Security retirement earnings provisions) Mr. BENTSEN, Mr. MOYNIHAN, and Mr. PACKWOOD conferees on the part of the Senate.

Mr. SYMMS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAHAM). Without objection, it is so ordered.

COMMEMORATING 50TH ANNIVERSARY OF PEARL HARBOR

Mr. LAUTENBERG. Mr. President, December 7, 1991, is the 50th anniversary of the unprovoked surprise Japanese attack on Pearl Harbor and the entry of the United States into World War II.

Early in the morning of December 7, 1941, some 360 Japanese planes attacked Pacific Fleet units at the naval base, Army aircraft at Hickam Field, and other nearby military installations on Hawaii. The American military bravely fought back to defend its base. Our sailors, soldiers, flyers, and gunners heroically manned their stations under the most difficult and trying conditions. They were caught off guard, some even sleeping, by this preemptive and unexpected attack. With the element of surprise on Japan's side, our forces could not fight off the large and well-armed Japanese attacking force.

More than 2,403 American servicemen were lost, 1,178 were wounded, 21 ships and 328 aircraft damaged or destroyed in the course of the attack. In less than 2 hours, the Japanese crippled the Pacific Fleet and undermined the American strategic position in the Pacific.

December 7, 1941, has been referred to as "a date that will live in infamy." Legislation I wrote designating the 50th anniversary of the attack as "National Pearl Harbor Remembrance Day" was enacted this year. It honors the brave individuals in the Armed Forces who served our Nation on December 7, 1941, and throughout World War II. The people of the United States owe a tremendous debt of gratitude to those who served at Pearl Harbor for their valor and sacrifice. I would like to recognize Mr. George Danko, the commander of the New Jersey Pearl Harbor Survivors Association, and Lee Goldfarb, founder of the Pearl Harbor Survivors Association, and national vice commander, for all their help and persistence in getting this legislation passed.

On that Sunday morning, December 7, 1941, more than Hawaii was attacked. American's sense of security was shattered. For the first time, the oceans did not protect America. Our borders were pierced, we were vulnerable, and the world would never be the same. Americans were indignant and wanted to avenge the lives the Japanese had taken. The country was unified and stood behind the President as he signed a declaration of war at 4:10 p.m., Monday, December 8, 1941.

Pearl Harbor will forever stand as a symbol of the dangers of complacency. It will serve as an eternal reminder of our need to protect our national security—not only with weapons but by our example as a democracy—even as we strive toward peace. It will always evoke the moment that America awoke from isolationism to the global responsibilities it assumes to this day.

The 50th anniversary is an important day in history and in the personal lives of those people who survived the attack on Pearl Harbor, and for the families of those who perished. President Bush will travel to Hawaii to give a speech at a ceremony commemorating the 50th anniversary of Pearl Harbor. All across the country, ceremonies like the one in Hawaii will take place in November and December.

On the 50th anniversary, members of the Armed Forces who were in Hawaii on December 7, 1941, and civilian employees of the War or Navy Departments who were wounded, or families of those who were killed in the Pearl Harbor attack, are all eligible to receive a new congressional medal commemorating the 50th anniversary of the attack. Lee Goldfarb, a native of Jersey City, estimates there are some 300 survivors in New Jersey. Mr. Goldfarb was aboard the U.S.S. *Ogala* during the attack as the ship suffered heavy damages before sinking. Some of these survivors will travel to Hawaii for the commemoration ceremonies. I am joining these survivors in Hawaii at the invitation of the Senate leadership, and look forward to these moving ceremonies.

SENATE CLOSED CAPTIONING

Mr. KASTEN. Mr. President, today is a truly historic day for the U.S. Senate—because today marks the beginning of closed captioning of Senate floor proceedings for the hearing impaired.

Today, we send a loud message to our more than 24 million silent partners—you deserve to be a part of the legislative process.

Senate Resolution 13 and the Americans With Disabilities Act required the Senate to make its proceedings available by January 1992. Mr. President, It is great to know that the Senate is not waiting until 1992 to provide full opportunities to those who have been left out of the process for too long—the hearing impaired.

In recent years, I have had the opportunity to interact with deaf and hearing-impaired citizens from all over the country, including many in Wisconsin. I have found them to be very energetic and committed—their thirst for knowledge knows no bounds. Closed captioning in the Senate will help satisfy that thirst.

Mr. President, my colleagues should be aware that closed captioning is not just for the deaf and the hearing impaired; it will affect the hearing population as well. It may well be part of the answer to the illiteracy problem that afflicts our Nation.

There are about 27 million American adults who are functionally illiterate; 18 million children in grades kindergarten to third grade are now learning how to read; about 3 to 4 million immigrants are seeking to learn English as a second language; and countless other Americans are seeking to improve their literacy skills. All of these Americans will benefit greatly from the historic Senate action today.

Another group that will be assisted by closed caption is senior citizens. Often, old age is accompanied by hearing loss. More often than not, the elderly have a difficult time trying to listen to TV. I am sure many will agree that America's elderly are among the most interested citizens when it comes to following the legislative process. I think they will greatly benefit from Senate closed captioning.

For many years, deaf and hearing impaired citizens have been left out of American society; they have never been able to enjoy the same range of information as their hearing counterparts—including Senate proceedings. I had an intern, Dick Albrecht, working on my personal staff who is deaf and attends Gallaudet University. While working with Dirk, I learned the true barriers that deaf Americans face. He, along with many other deaf Americans, obtains information through his eyes, not his ears—and we hearing-Americans need to take that into account. It's refreshing to know that Dirk, or any other deaf employee in my office, will now know the U.S. Senate is actively trying to cut through some of those barriers.

I am proud that the students at Delavan School for the Deaf in Wisconsin can now follow the legislative process and actually read Senator's remarks as they are speaking.

Mr. President, this is a wonderful day for hearing impaired Americans.

TRIBUTE TO FATHER "WOODY": CONSCIENCE OF DENVER

Mr. WIRTH. Mr. President, last week one of Colorado's best friends passed away. Msgr. C.B. Woodrich, best known to Denverities as Father "Woody," was taken from us at age 68—and his passing is not only a loss to his many friends, it is a loss to everyone in this Nation who cares deeply about the homeless, the jobless, and all of those who are in the shadows of our society.

I was blessed to count Father Woody among my friends, and my most recent recollection of him was a little over a year ago when he invited me to join him at Denver's Samaritan House homeless shelter during the Christmas holiday season. Father Woody was the founder of this shelter—and his work as the pastor of Holy Ghost Church was completely dedicated to serving the poor, the innocent, and the underprivileged.

Citing all of Father Woody's benevolent works would fill a volume. To say that he was a man of compassion is something of an understatement.

For those of us who knew him well, however, I prefer to remember Father Woody as a man with a tremendous sense of humor, a man who did not suffer fools well, and a man who never minced his words or took himself too seriously.

I shall miss this gentle and moving man. He would not, I am sure, like his friends to dwell on his achievements—but perhaps he would forgive my saying that he was truly the conscience of Denver, CO.

The real spirit of Father Woody is best captured, for me at least, in the following piece by one of Denver's most popular columnists, Gene Amole. Mr. President, I ask unanimous consent to have Mr. Amole's piece, "Father Woody Not One To Wear a Halo" printed in the RECORD at this time.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

FATHER WOODY NOT ONE TO WEAR A HALO

Holier.

Do you suppose there are smoking and non-smoking sections in heaven? If so, you'll find Monsignor C.B. Woodrich taking deep drags from a Camel in the smoking section. Father Woody, as most knew him, literally smoked himself to death.

He was still attending St. Thomas Seminary when we met 40 years ago. He introduced himself to me as "Bert," and that's the way I have always known him. The Father Woody business seemed a little theatrical to me, sort of like a character in the movies that Regis Toomey might have played back in the 1940s.

Bert had been a Madison Avenue huckster before entering the priesthood and gravitated toward those of us in the local advertising community. He was something of a rebel in those days, occasionally wearing a garish aloha shirt under his coat instead of a clerical collar.

Smoking was an addiction from which he never recovered. He suffered from diabetes and emphysema. I often lectured him about that. I kicked the habit years ago but am not an anti-smoking crusader. It usually doesn't bother me if others smoke around me so long as they don't blow it in my face.

Bert was different, though. His lungs were in terrible condition. He wheezed and sometimes gasped when he talked. It made me furious that he didn't take better care of himself. Right this minute I am still angry at him for letting this happen. "Your body doesn't belong to you. You are just being permitted to use it." I would tell him. "It belongs to the poor people, the homeless and all the forgotten folks who depend on you. Stop it!"

But he couldn't. He would shrug and then a helpless little smile would cross his face and he would say, "Listen, I am a priest and have to be able to do something." People responded to his humanity, his willingness to admit his own character flaws. He was not holier-than-thou, or holier than anyone else, either.

Those of us in the newspaper game will have to find a new priest to preach over our fallen comrades. Bert probably conducted more funeral services for old reporters and editors than anyone else. One stands out in my memory, the rosary and memorial Mass for Leonard Tangney at the tiny Mother of God church in 1984.

Bert was one of seven priests helping us pray old Leonard into heaven. We made it through all Five Joyful Mysteries before the service was over. As the priests filed out of the church, Bert stopped by my seat, leaned over and said, "You're next." I never quite understood that. Maybe it was because we were the same age, and he was reminding both of us that we ought to get our spiritual houses in order.

When he was chaplain at St. Joseph Hospital, Bert ministered to some of the town's richest and most powerful Catholics, Helen Bonfils and Gene Cervi, to mention just two. I asked him once about Miss Helen's second marriage. "Why would an 80-year-old woman love a 40-year-old man?" I wondered.

"She loved him because he was an animal!" Bert replied.

People in our business liked Bert because they didn't have to watch the way they talked around him. His own language was pretty salty. He loved the spotlight and enjoyed being around the town's power brokers. He was a friend of an atheist I know. I used to see them having lunch at the Brown Palace Hotel occasionally. What did they find to talk about?

I must ask her sometime.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1991

The PRESIDING OFFICER. The Senate will resume consideration of S. 543, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 543) to reform Federal deposit insurance, protect the deposit insurance funds, and improve supervision and regulation of and disclosure relating to federally insured depository institutions.

The Senate resumed consideration of the bill.

Mr. RIEGLE. Mr. President, I thank the clerk for reporting the bill. Let me make some opening comments, and then I am going to send an amendment to the desk at that point. Then I will be happy to yield to the Senator from New Mexico, who is standing in for Senator GARN for a period this afternoon. Senator GARN is enroute, on his way back from Utah.

Mr. President, this afternoon we are returning to consideration of S. 543, the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991. Let me just summarize briefly the considerable progress that the Sen-

ate has made on this legislation last week, and my own suggestions and plan for how to proceed today.

In my own view, the Senate has already addressed and settled three of the most important and difficult controversial areas of this legislation. We have voted on and disposed of the securities issue, the insurance issue, and the interstate provisions in this legislation.

At the point the Senate had to interrupt debate on this bill, it was to resolve the urgent issue of extended unemployment benefits. And that issue, when it was brought to the floor, occasioned a major debate, and it was eventually settled. But it became something that took some hours and, therefore, our bill had to stand aside while that was done and sent to the President, and I gather he has now signed that legislation.

Given the persistent economic hardship in the country and the trouble facing unemployed workers across the country who exhausted their unemployment benefits, that issue was absolutely essential, and it was appropriate that it, in fact, go on the fast track to resolution, which was done. Debate on that issue occupied the Senate on Thursday evening and all day Friday. But having settled now the unemployment compensation extension issue, we are now ready to return to the banking bill. And, as I have just said, I believe that the majority of the difficult decisions are behind us, although some amendments remain that will require debate and votes.

So let me describe now how I would like to proceed this afternoon.

First, I would like to offer an amendment to simply try and improve a provision that was adopted during the Banking Committee's markup of the bill regarding foreign deposits. I understand that Senator SASSER would like to speak about this amendment, after which Senator KOHL would like to offer a sense-of-the-Senate resolution regarding foreign deposits.

After that discussion has occurred and that amendment has been dealt with, I would like to then turn to the fourth, and I believe the last area of significant controversy within the bill, namely the bill's consumer protection provisions. It is my understanding that Senator MURKOWSKI and Senator COCHRAN may offer amendments to this title, and I would like to be able to debate and vote on those amendments this afternoon, as soon as that is feasible.

I might say, I also received a phone call from Senator METZENBAUM, who is flying back in, who has a longstanding interest in that area where he also wants to be present and hopes to be present for that debate when that occurs later today.

If we can set that schedule and move through that schedule, I understand that Senator KERRY of Massachusetts and Senator GRAHAM of Florida may offer amendments to title I of the bill dealing with the recapitalization of the bank insurance fund. Assuming that they do so, I would like to deal with those amendments and then turn to amendments that Senator DOMENICI indicated he may offer regarding securities fraud legislation, unless he and Senator BRYAN are able to work that issue out in the meantime. I understand some discussions are ongoing in that area.

I should also say that I have heard from Senator KERRY from Massachusetts, who I was just referencing, and he is also traveling back to Washington today and intends to be here later in the afternoon and be prepared to deal with the issue that he has brought forward.

As I have now said, I think we have already addressed and settled the three most contentious issues in the bill. I believe the remaining issues and amendments are ones where the Senate has to work its will. And after it has done so, by one means or another, I think we can then vote on final passage of this legislation within the next day or two, and it would certainly be my goal to attempt to accomplish that.

I talked with Senator GARN yesterday. Senator GARN is in Utah. I will not presume to make any representation for Senator GARN now until he has a chance to arrive and speak in his own behalf, but I will say this: That we have worked very closely together and cooperatively on this legislation from the very beginning through the markup process, bringing the bill to the floor, and the time that the bill has been on the floor.

Last evening, there was an opportunity for the senior staff of the Banking Committee of both parties to meet and sort of assess where we were with respect to the work through the legislation, and the outstanding issues that were still there to be dealt with. And, for a period of time, representatives of Treasury Department came and were present to think with us about the scope of the legislation, the necessity for the legislation.

Without going into any specific item in the bill, I think it is clear on the part of all that this legislation, in whatever final form we decide upon, has to be enacted before the Senate goes into recess this year. If the schedule is adhered to that the Senate and the House will finish operations before the Thanksgiving recess, there should be no doubt about the fact that this legislation, whatever final form emerges, has to be enacted and has to be signed into law by the President.

I say that because the deposit insurance fund that stands behind the deposits of citizens, of individuals, in commercial banks, that deposit insurance fund is virtually empty and will be empty before the end of this calendar year.

This legislation provides an infusion of $70 billion of borrowings from our Government that will go into the bank insurance fund, both to cover any future losses associated with shutting down failed banks and to provide necessary working capital to handle the disposition of the assets that would be taken in from those failed banks in the months, in the period ahead.

So in order for that to take place on a proper and orderly basis, the funds have to be in the insurance fund. And, of course, the plan is for the banks themselves to repay that borrowing over a 15-year time period, so that we avoid a taxpayer bailout in this situation. That has been discussed on this floor before.

But the essential fact is that this legislation must be enacted before the Congress adjourns. There is just no other way to say it. It has to be done. So it is certainly my intention, and I know also in that respect, the intention of Senator GARN and of the members of the Banking Committee, to get this legislation completed.

So we have to march on through it.

It might also be said that the House has approached this issue somewhat differently than the Senate. They have, on two occasions, attempted to pass a bill on the House floor, and the differences were such that both of those bills were not passed in the House, and efforts have been mounted again and are ongoing today to bring a bill through the House.

I believe that at some point soon, they will produce a bill in the House. And that bill and the bill that we produce here will go into conference and will be settled out, and we will be back here before the adjournment so that we can settle this issue once and for all.

So, for that reason, this legislation must pass.

In the way of another observation about our plan for proceeding, I would like to say to all Senators who have amendments that, in every case possible, I would like to try to work those amendments out. I have said to Senator GARN that, where that is possible, where he and I could reach agreement representing the two sides of the committee and could work out an amendment with a Senator, a group of Senators, we would then propose to take those amendments that have been worked out agreeably and collect those in a managers' amendment which would come at the end of the consideration of this bill.

And so I say to all Senators who have amendments, I hope we will work together to see what amendments can be handled in that fashion. Those that cannot be, if Members are going to offer them on the floor, will then in turn have to be offered and debated and

settled by the Senate as a whole. My hope is that on the amendments which fall into that category, ones that cannot be settled but ones that require debate and a vote on the floor, we can work out time agreements that are fair but also take account of the fact we do not have a great deal of time left and there is other legislation waiting behind this bill that does need to come to the Senate floor.

So my hope is that we can work out agreeable time limits that get the job done but are compact so that we can have a debate, get the issue framed on both sides, take it to a vote, settle it, and move on. So we will attempt to do that as the day goes on.

I will be working with Senators to try to either resolve amendments through a managers' amendment where agreement can be worked out ahead of time, and, if not, then to schedule those in an orderly way so that we can take them up, debate them, and vote them up or down, as the Senate so chooses.

I know of no other way to proceed. I can assert that the administration, for its part, feels this is an urgent matter, as I feel and as I know Senator GARN feels, and I know I can make that representation for him.

I also believe that, with respect to the administration, they have said to me that they like the Senate bill. It does not mean that they like in detail every single part of it, but that they have been supportive of the bill we have produced. They have indicated to me, as of last evening, that they think the compromise we have worked out in the interstate section of the bill is a useful compromise and one that they find they would support. Their clear signal to me in our discussions was to the effect they thought we ought to try to move ahead and see if we can resolve the rest of the issues in this bill and get the bill to conference.

I will leave it at that because Senator GARN and I have not had much time to talk over the weekend because of the fact that he was in Utah, as I was here. We have had the one conversation I have mentioned. Until Senator GARN arrives, I am not going to attempt to make any other comment with respect to his view at this point beyond what he himself would choose to say. Although if the Senator in New Mexico has a comment, I would certainly welcome that before sending this amendment to the desk.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I thank the Chair. I thank the distinguished chairman.

I do have a few comments, a few thoughts. First of all, I am here because the ranking Republican, Senator GARN, asked me to be here. I serve on the committee, albeit a rather new member of that committee.

Might I say to Senator RIEGLE, I think it is fair to say we have to pass some banking legislation before we leave. I think it is absolutely imperative that we pass the BIF refinancing, as the Senator has stated. I do not think there is any way we can leave here for the year and claim to be responsible if we have left the BIF fund, that is, the fund that the banks use to take care of insolvent banks, and they eventually pay all that back under the BIF plan in the bill. It is not the Government. The Government helps them borrow it, but the banks assess all the banks a certain amount, and they more or less agree we have been reasonable in this bill in our 15-year finance plan. So I share with the chairman the absolute requirement and the commitment from our side that we get a bill that includes the BIF, the refinancing for their insurance fund.

Separate and aside, Mr. President, from this bill but something that the Banking Committee must consider, we have the RTC fund, which clearly is in need of additional capitalization. It is not the case of whether or not we want to put more money into that. It is a case of our already having committed to it, and now we have to put the money up to make the closures and the buyouts and the mergers. If it runs out of money and we still have work to be done, we do not save our taxpayers any money; we cost them money. There is no doubt about that. When they are ready to put together the buyouts or the mergers, they do it on the basis of the most economic method. And if we do not have money there, we can just commit to our taxpayers that we are wasting money because they will have to do it in a more expensive way. So I hope the distinguished chairman agrees with that.

Mr. RIEGLE. Will the Senator yield?

Mr. DOMENICI. I am pleased to yield.

Mr. RIEGLE. I do agree with the Senator on that. That is another item that, in my view, has to move through here before the end of this session although, as the Senator knows, we have attempted to keep these matters separate rather than combine them in one piece of legislation.

Mr. DOMENICI. Absolutely.

Mr. RIEGLE. I will say this. There have been some signals out of the House of Representatives from the Senator's side of the aisle. Apparently, there is some group of people over there—I do not know how determined they are—who have made an attempt to stop the RTC funding unless there is an economic stimulation package developed. I am not sure, but that warning flare has been fired in the air. That probably ought to be made a part of the record.

Mr. DOMENICI. I thank the Senator. I am not aware of that. Whether it is Republicans in the House of Democrats in the House, we have to pass additional funding for the RTC. It is sort of like buying a bunch of Christmas presents and then in February, when the time comes to pay for them, act like you did not buy them. We are just going to have to do that. Some can vote against it, but at least a majority ought to do what they must do in this regard.

I might say to my friend, the chairman, that I do not know if we are going to get the GSE legislation now or not, but it seems to me that we were mandated to do that, and I think at least we ought to commit a time specific that we will get that done. That is not as important as the other two items.

Permit me, Mr. President, to talk about two other issues, if I might.

I know that the 10(b) class actions are of interest to a number of Senators and that the junior Senator from Nevada has sought to extend the statute of limitations for those kinds of actions. I now have, and am willing to present to the Senator or to him, the administration's position and the FCC Chairman's position. Both wanted the extension. But I might say both want the extension conditioned upon our having some reform with reference to how we do the discovery work and who pays for it and who pays for the lawsuits in the event they are absolutely meritless. I think in both cases the administration and the FCC are saying we want reform there because there is some evidence—in fact, I say, as one who is now familiar with it, there is a lot of evidence that many of the cases are now being brought just as a matter of course and money is being collected just because you file them. That is one issue. I hope the chairman knows I am not going to try to hold anything up, but neither do I think we should count on extending the statute of limitation for this very controversial type action with no reform as to who is going to pay the cost of the lawsuits, some mild inhibiter or not, and I think we have to get to this.

Mr. RIEGLE. Will this Senator yield.

Mr. DOMENICI. I will be pleased to yield.

Mr. RIEGLE. I have spoken today with Senator BRYAN of Nevada, who, as the Senator knows, is on the other side of that issue than the Senator from New Mexico. He has indicated to me that he is prepared to be in conversation with the Senator and their staffs to see if there is a way to find an accommodation on this issue.

If there is, that would be a very useful development. If not, at some point there should be a period of time for debate and a vote to settle it. But he did indicate to me that he is prepared to discuss that with the Senator and hopefully those discussions can ensue.

Mr. DOMENICI. Mr. President, let me also state on that issue that I understand eventually we might to have an up or down on my amendments. Let me say I feel very strongly about this. I

have now read sufficient enough to know that we have to get an amendment adopted if we are going to extend the statute of limitations. I would be prepared to spend a little time on that.

Having said that, I want to tell the chairman about one other amendment that I hope he will look at with us as part of his general desire to work out some things here.

Mr. President, we have found that in a number of States the rigid certified appraisal requirements under FIRREA are now rate inhibitors to getting money loaned, and we are all complaining about the banks in America not lending money. We think one of the reasons is that we have the threshold for appraisal which is so low, $50,000 of value, as to require a certified appraisal both for commercial and residential. We think that is extremely low, and it is clogging up the process. In some States it is taking 3 to 6 months to get the appraisal done.

We are sitting here saying let us get the regulators to loosen up so money can be loaned. We have an amendment that will attempt to fix that and a few other items with reference to appraisal that we would like to share with you and see if we could not reach some accommodation.

I yield the floor, if it is his desire to submit an amendment.

Mr. RIEGLE. I thank the Senator from New Mexico. Again, my hope is that on any issues we have which are in play and contentious that we talk them through, work them through. We have a lot of other things to do this week with respect just to the work of the Banking Committee. So I think time is really of the essence to try to get these matters resolved.

Let me send an amendment to the desk that simplifies the bill regarding foreign deposits. This amendment has the support of myself, and Senator GARN.

AMENDMENT NO. 1350

(Purpose: To revise the treatment of foreign deposits)

Mr. RIEGLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan [Mr. RIEGLE], for himself and Mr. GARN, proposes an amendment numbered 1350.

Mr. RIEGLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning with page 122, line 23, strike all through page 125, line 8, and insert the following:

"(viii) SPECIAL ASSESSMENT TO RECOVER LOSSES ON FOREIGN DEPOSITS.—

"(I) IN GENERAL.—This paragraph shall apply if—

"(aa) the Corporation incurs a loss with respect to an insured depository institution; and

"(bb) persons with foreign deposits at the institution receive more than they would have received if a receiver had been appointed for the institution on the relevant date and the applicable foreign deposits had been included as part of the receivership's liabilities.

"(II) SPECIAL ASSESSMENT REQUIRED.—The Corporation shall, as soon as practicable, recover the difference between—

"(aa) the amount that persons with foreign deposits at the institution received, and

"(bb) the amount that the Corporation estimates those persons would have received if a receiver had been appointed for the institution on the relevant date and the applicable foreign deposits had been included as part of the receivership's liabilities,

by imposing 1 or more special assessments on all members of the deposit insurance fund of which the institution was or is a member, in proportion to the foreign deposits held by those members at the beginning of the semiannual period containing the relevant date. The Corporation shall base the estimate required by item (bb) on the estimated loss that the Corporation will incur in the resolution actually undertaken with respect to the institution. Any calculation under this subparagraph shall be in the Corporation's sole discretion.

"(III) TIMING OF SPECIAL ASSESSMENTS.—

"(aa) IN GENERAL.—Special assessments under subclause (II) shall begin not later than the semiannual period beginning 90 days after the date on which the aggregate amounts calculated under subclause (II) (with respect to all institutions that were or are members of the deposit insurance fund), and not yet assessed, exceed $1,000,000.

"(bb) INTEREST ON DELAYED ASSESSMENTS.—Any amount calculated under subclause (II) and not yet assessed shall bear interest at the daily average yield on 3-month Treasury obligations.

"(IV) DEFINITIONS.—For purpose of this paragraph:

"(aa) CAPITAL CATEGORIES.—The terms 'adequately capitalized' and 'significantly undercapitalized' have the same meanings as in section 37 of the Federal Deposit Insurance Act.

"(bb) FOREIGN DEPOSIT.—The term 'foreign deposit' means any obligation of an insured depository institution described in subparagraph (A) or (B) of section 3(l)(5).

"(cc) RELEVANT DATE.—The term 'relevant date' means the date on which the earliest of the following occurs with respect to an insured depository institution:

"(AA) The institution is significantly undercapitalized, and has advances from a Federal Reserve bank outstanding for more than 5 consecutive days (without subsequently becoming adequately capitalized).

"(BB) The Corporation initiates assistance under section 13(c) with respect to the institution.

"(CC) A receiver or conservator is appointed for the institution.".

Beginning on page 231, line 21, strike all through page 233, line 22, and insert the following:

"(6) SPECIAL ASSESSMENT TO RECOVER LOSSES ON FOREIGN DEPOSITS.—

"(A) IN GENERAL.—This paragraph shall apply if—

"(i) the Corporation incurs a loss with respect to an insured depository institution; and

"(ii) persons with foreign deposits at the institution receive more than they would have received if a receiver had been appointed for the institution on the relevant date and the applicable foreign deposits had been included as part of the receivership's liabilities.

"(B) SPECIAL ASSESSMENT REQUIRED.—The Corporation shall, as soon as practicable, recover the difference between—

"(i) the amount that persons with foreign deposits at the institution received, and

"(ii) the amount that the Corporation estimates those persons would have received if a receiver had been appointed for the institution on the relevant date and the applicable foreign deposits had been included as part of the receivership's liabilities,

by imposing 1 or more special assessments on all members of the deposit insurance fund of which the institution was or is a member, in proportion to the foreign deposits held by those members at the beginning of the semiannual period containing the relevant date. The Corporation shall base the estimate required by clause (ii) on the estimated loss that the Corporation will incur in the resolution actually undertaken with respect to the institution. Any calculation under this subparagraph shall be in the Corporation's sole discretion.

"(C) TIMING OF SPECIAL ASSESSMENTS.—

"(i) IN GENERAL.—Special assessments under subparagraph (B) shall begin not later than the semiannual period beginning 90 days after the date on which the aggregate amounts calculated under subparagraph (B) (with respect to all institutions that were or are members of the deposit insurance fund), and not yet assessed, exceed $1,000,000.

"(ii) INTEREST ON DELAYED ASSESSMENTS.—Any amount calculated under subparagraph (B) and not yet assessed shall bear interest at the daily average yield on 3-month Treasury obligations.

"(D) DEFINITIONS.—For purposes of this paragraph:

"(i) CAPITAL CATEGORIES.—The terms 'adequately capitalized' and 'significantly undercapitalized' have the same meanings as in section 37 of the Federal Deposit Insurance Act.

"(ii) FOREIGN DEPOSIT.—The term 'foreign deposit' means any obligation of an insured depository institution described in subparagraph (A) or (B) of section 3(l)(5).

"(iii) RELEVANT DATE.—The term 'relevant date' means the date on which the earliest of the following occurs with respect to an insured depository institution:

"(I) The institution is significantly undercapitalized, and has advances from a Federal Reserve bank outstanding for more than 5 consecutive days (without subsequently becoming adequately capitalized).

"(II) The Corporation initiates assistance under section 13(c) with respect to the institution.

"(III) A receiver or conservator is appointed for the institution.".

On page 295, between lines 9 and 10, insert the following:

"(C) SPECIAL ASSESSMENTS ON FOREIGN DEPOSITS.—The Corporation shall not consider the proceeds of any special assessment on foreign deposits.".

Mr. RIEGLE. Mr. President, let me just make a brief explanation. I know my colleague from Tennessee is here, who wishes to speak on this amendment.

This amendment is technical in nature. It simplifies and improves the provision that was adopted during the Banking Committee's markup of this

bill. As I said that has been accepted on both sides.

The provision provides that foreign deposits are protected in the future; there shall be an assessment to recover the cost only on banks that hold foreign deposits. This amendment is a compromise. It is the result of much hard work by Senators on the Banking Committee, and in particular Senator SASSER, Senator BRYAN, and Senator D'AMATO.

I also want to compliment Senator KOHL and Senator GRAHAM of Florida for their efforts. I know Senator KOHL is here and will be offering a sense-of-the-Senate resolution after Senator SASSER has completed his remarks on this provision.

So let me yield the floor if Senator SASSER is prepared to address this issue.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Mr. President, I thank the distinguished chairman of the Banking Committee for yielding. Let me say that I rise today to address the issue of foreign deposits and the provision that is contained in the bill.

There will be a resolution offered shortly by Senator KOHL. I also will support the resolution that will be offered by the distinguished Senator from Wisconsin.

I am pleased that the Senate for the first time is facing squarely the inequitable and costly preference that exists for foreign depositors over domestic depositors in our banking system. S. 543 contains a compromise provision negotiated between myself, Senator BRYAN, and Senator D'AMATO which was unanimously accepted by the Banking Committee during the markup of the bill. I express my appreciation to the chairman, Senator RIEGLE, for his cooperation, and support in that regard.

The provision is being improved and strengthened by the just-adopted managers' amendment to the bill. The provision will bring fairness to an unjust situation. Foreign deposits, unlike domestic deposits, are regularly insured by the Federal Deposit Insurance Corporation, but they are not assessed deposit insurance premiums as are domestic deposits.

Mr. President, this provision will make those banks that benefit from the coverage of foreign deposits pay for what they receive—banks with domestic pay for what they receive when their domestic deposits are insured.

What gives rise to this concern here? The contrasting treatment last year of the National Bank of Washington vis-a-vis the Freedom National Bank of Harlem, shows the gross inequity and unfairness that has been worked by previous practices.

In the National Bank of Washington case, all deposits, including $85 million of deposits at a Bahamas branch, were made whole and good by the Federal Deposit Insurance Corporation; $85 million for foreign deposits were protected by the Federal Deposit Insurance Corporation.

Meanwhile, at the Freedom National Bank in Harlem, when it became insolvent, charities like the United Negro College Fund lost a portion of their deposits.

The message is clear. If you make a deposit in the Bahamas branch, you are going to get the backing of Uncle Sam. But if you make a deposit in a bank in Harlem, or in a community bank in Selmer, TN, you are at risk. And this is true even though a community bank pays premiums on all of its deposits. But not one dime is paid to the FDIC to insure a foreign deposit.

The foreign deposits policy of the Federal regulators, I say, Mr. President, is inequitable. It is a distortion of the banking system overall. There is no getting around it.

Free coverage of foreign deposits has an unfair and negative effect on competition. Banks with overseas deposits, because they have free insurance, can raise money less expensively than they would if they were paying dollar for dollar for the insurance on these foreign deposits.

The problem that is posed is that a big money center bank is a substantial risk to the insurance company fund. Yet most of these banks pay premiums on a very small percentage of their deposits. Numerous money center banks pay premiums on less than one-half of their deposits because the other half are so-called acquiring deposits, while regional and community banks pay premiums on all of their deposits.

Mr. President, there has never been a bank failure where foreign deposits have not been made whole. In one way or another, the Federal Government has stood behind an estimated $22 billion—$22 billion—in foreign deposits over the last decade.

In 1980, for example, First Pennsylvania failed with over $2 billion in foreign deposits on its books, and they were covered. Four years later, Continental Illinois went under with a whopping $18.5 of overseas deposits. Nearly $900 million was insured at the First Republic; $138 billion at First City. The list goes on and on.

In August 1990, $85 million of deposits at the Bahamas branch of National Bank of Washington, as I indicated earlier, were bailed out. In January, depositors at the Bank of New England's Cayman Islands branch got help from the FDIC to the tune of $100 million.

The problem, Mr. President, is these banks did not pay 1 cent of premiums to ensure these foreign deposits. Yet, they were fully insured by the Federal Government.

So the present policy is inequitable within the banking industry. For example, Bankers Trust has nearly twice the assets of SunTrust. Yet, Bankers Trust pays less than one-half the premiums of SunTrust. In 1990, Bankers Trust paid only $27 million in premiums, while SunTrust paid $58 million. Why is that? Because Bankers Trust, even though it has twice the assets, has a very substantial portion of foreign deposits. Whereas, SunTrust has overwhelmingly domestic deposits.

Mr. President, as the Comptroller General said in testimony before the Senate Banking Committee:

> * * *The current assessment base gives * * * larger banks a greater incentive to seek funds through overseas deposits * * * that are not part of the * * * premium base, but are frequently protected on a de facto basis when banks fail. Since the potential failure of the large bank places the bank insurance fund in the most danger, we believe the fairest way to recapitalize the bank insurance fund is with an assessment base that encompasses all activities on a bank's balance sheet.

So, Mr. President, the provision that is contained in the bill and is being improved by the manager's amendment will redress what I perceive and others perceive to be a very inequitable situation. It provides that if foreign deposits are covered in the future, there will be an assessment by the Federal Deposit Insurance Corporation to cover the costs that will only be paid by banks that have foreign deposits.

Under this provision, never again will premiums paid by community banks be used to cover the deposits of sophisticated foreign investors. The free ride will be over, and the taxpayers will be protected. The provision is an alternative to an up-front assessment of foreign deposits.

The argument of the money center banks has always been that foreign deposits are not insured; therefore, they should not be assessed. If that is the case, this amendment says, fine, have it your way; then foreign deposits are not insured by policy. But if somehow, some way, they manage to get covered, if one of these Bahamas bailouts slips through the cracks again, as they have so often in the last decade, we tell the Federal Deposit Insurance Corporation to recoup the costs.

The assessment must be sufficient to recover that share of the total cost of resolving the failed institution's foreign deposits. So banks that have foreign deposits—not banks with domestic deposits—will pay off foreign depositors in the future.

Mr. President, this provision is fair to small banks and is fair for big banks. Smaller domestically oriented banks will no longer be subsidizing the big banks. Moreover, Mr. President, this provision represents a significant protection to the bank insurance fund. The bank insurance fund and the taxpayers will never again be called upon to pay out on unassessed foreign deposits.

This is important, because there is much evidence that a great deal of the

threat facing the Federal Deposit Insurance Corporation today is from banks that hold foreign deposits.

So, in summation, the provision will protect the taxpayers. It will reduce the distortion and inequities in the banking system. I urge support of the resolution to be offered by the distinguished Senator from Wisconsin, who I see has now arrived on the floor, which underlines the vital importance of the foreign deposits provision in the bill.

As the chairman well knows the issue of assessing deposit insurance premiums on foreign deposits of U.S. banks has been one of the most controversial questions in banking for many years. Community bankers have long held that it is unfair for foreign deposits to be covered by the FDIC when there are no insurance premiums paid on them. The coverage of foreign deposits is particularly unfair when it is considered that community banks pay premiums on all their domestic deposits, but typically the FDIC only covers those up to $100,000 in a small bank failure. The failure of Freedom National Bank in Harlem last year was a good example of this phenomenon; many charities were left holding the bag because of the FDIC policy. However, at just the same time the FDIC arranged a transaction that resulted in full coverage for the depositors at the Bahamas branch of the National Bank of Washington, even though NBW never paid premiums on those deposits.

Mr. RIEGLE. The Senator is absolutely right and I commend his leadership on this issue. I also want to compliment Senators BRYAN, D'AMATO, and KOHL for raising this issue and working hard on a compromise that I will do everything in my power to have enacted.

Mr. SASSER. I thank the distinguished chairman. As he knows, the bill contains a provision that provides that if foreign deposits are protected in the future there shall be an assessment to recover the cost only on banks that hold foreign deposits. As a result of this, no community bank shall ever pay again for the insurance of a foreign deposit. At this time, I also want to thank Senator KOHL for his efforts and leadership on this issue. I also want to say that I appreciate the sincerity of Senator D'AMATO in seeking a resolution to this issue. I enjoyed working with the Senator from New York and his staff.

Mr. RIEGLE. The Senator is correct about the effect of this provision. This is an extremely worthwhile and fair provision that settles a longstanding controversy. I will oppose any weakening or alteration of this provision in the conference committee meeting with the House.

Mr. KOHL. I agree with Senator SASSER and Senator RIEGLE that the provision in the bill is a giant step toward an equitable resolution of this issue. I am pleased to be a part of this effort to bring some fairness to community banks. Our Nation's community banks have been paying the cost of insurance of foreign deposits for many years. This has to end.

Mr. GARN. I fully support the compromise provision contained in the bill. I have never supported assessment of foreign deposits but I believe this is a reasonable approach. I will work to preserve this approach in the conference committee meeting with the House of Representatives.

Mr. D'AMATO. I also support fully the compromise provision on foreign deposits. It is fair. If banks get insurance on these deposits they have to pay for it, but in the meantime the presumption is that these deposits are neither insured nor assessed. I will work with my colleagues to be sure that this amendment is not diluted in conference by the other body.

Mr. BRYAN. I am pleased to have worked with my colleagues in fashioning this historic compromise and believe it is an equitable solution.

Mr. SASSER. I yield the floor.

Mr. GARN. Mr. President, I rise in support of the compromise that has been proposed on the issue of assessment of foreign deposits. The committee bill all but eliminates cases in which foreign deposits will be protected by the FDIC. And under the compromise on foreign deposits that is now being considered, in those few cases when foreign deposits are protected by the FDIC, a special assessment to recover the cost of protecting them will be imposed on the large banks that hold foreign deposits.

It is my hope that this provision will eliminate once and for all the argument that foreign deposits should be part of the base for assessing FDIC premiums. No bank that is not a holder of foreign deposits will ever face a cost of protecting them.

As we consider this compromise, I think it is important for the Senate to review the arguments against simply applying deposit insurance assessments to foreign deposits. In my view there are very good reasons why such assessments have been considered and rejected at least nine times since the 1930's, and little argument for them.

The major argument put forward in support of such assessments is that big banks that found themselves with foreign deposits have paid no premiums on those foreign deposits while being fully protected under the too-big-to-fail doctrine. Thus, they have enjoyed a subsidy from the smaller banks. This claim does not withstand scrutiny. Looking at the data, the better argument is that large banks already subsidize the cost of insurance for small banks because they have paid far more to the bank insurance fund than has been spend on large bank failures.

While there is little reason to impose assessments, there are many very good reasons why such a policy would be a mistake. First and foremost, insurance coverage for foreign deposits would expand the FDIC safety net and expose the FDIC to considerable foreign exchange risk at a time when we are trying to reduce the exposure of the fund.

Second, such assessments would have a strong negative impact on U.S. banks in the international banking market, since no other deposit insurance system in the world imposes premium assessments on interbank deposits in foreign branches of its banks. In foreign markets, U.S. banks raise between two-thirds and three-fourths of their funds through the interbank and wholesale loan markets, which feature very competitive pricing. Most foreign deposits are raised and used overseas. A 25–30 basis point assessment could cause U.S. banks to either lose customers or lose money, putting them out of this business.

A contraction in the interbank or wholesale funds of U.S. foreign branches would limit an important source of international liquidity for them. If U.S. banks ware forced to retrench internationally, their absence from the international marketplace would limit seriously the availability of competitive financing for U.S. exports. As former Federal Reserve Board Governor Heller has said: "* * * If American banks disengage from the international arena, American businessmen will have to conquer new export markets without an important ally in the form of their own banker. The loss of that extra competitive edge may be costly in terms of foregone sales."

For all these reasons, assessment of foreign deposits would be a mistake. That is why I believe this compromise is workable. It would maintain current policy under which foreign deposits are neither assessed nor insured. Only in rare cases where foreign deposits are protected, such as a systemic risk situation, foreign deposits would be assessed to recover the cost of such protection. I urge adoption of the compromise.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER (Mr. BRYAN). The Senator from Wisconsin.

Mr. KOHL. As my colleagues know, I had intended to offer an amendment based on a simple principle: Institutions that benefit from deposit insurance protection ought to pay for that protection. That principle led me to the conclusion that since we have insured—and will continue to insure—foreign deposits, banks ought to pay insurance premiums on them to the bank insurance fund. Simple principle, logical conclusion.

Unfortunately, there is no guarantee that the amendment enacting it would survive the conference committee, even if that amendment won overwhelmingly in the Senate, as I believe it would have.

As a result, Mr. President, we have been negotiating a compromise which, in my judgment, represents a vast improvement over current law, a substantial improvement over the bill, and only a modest move back from the principle I wanted to originally achieve. The first part of that compromise was embodied in the Riegle-Garn amendment just adopted. The second part is the amendment I will soon send to the desk and ask it be read.

Mr. RIEGLE. If the Senator would yield momentarily before having that reported, I would like to move ahead to the adoption of the technical amendment and have that settled before the Senator's sense-of-the-Senate resolution is laid down. If that is agreeable, I urge that we adopt the technical amendment sent previously to the desk.

Mr. DIXON. Will the manager yield for a question?

Mr. RIEGLE. Yes.

Mr. DIXON. Is my understanding correct that the procedure now taking place is that my friend, the Senator from Tennessee, has offered an amendment that the managers have agreed to?

Mr. RIEGLE. Yes.

Mr. DIXON. The Senator from Wisconsin has another amendment that will be generally agreed to?

Mr. RIEGLE. Yes, it is generally agreed to. He does want a vote on it, and that will occur later this afternoon at a time to be set. The technical amendment I have asked for a vote on will not require a rollcall vote.

Mr. DIXON. I see. I have no objection.

Mr. RIEGLE. Mr. President, I ask that the Senate now act to approve the technical amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the technical amendment.

The amendment (No. 1350) was agreed to.

Mr. RIEGLE. Mr. President, I move to reconsider the vote.

Mr. D'AMATO. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1351

(Purpose: To express the sense of the Senate with respect to foreign deposits)

Mr. KOHL. Mr. President, I send my amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will now report the amendment.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. KOHL], for himself, Mr. NICKLES, and Mr. DECONCINI, proposes an amendment numbered 1351.

At the end of title II, add the following new section:

SEC. 231. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) one of the primary purposes of banking legislation is to restore the confidence of the American public in the soundness and equity of the United States banking system;

(2) public confidence in the soundness of the Bank Insurance Fund has been shaken by a Congressional Budget Office estimate that by the close of 1993, bank failures among large banks will cost the insurance fund approximately $15,000,000,000, compared to a $5,000,000,000 cost for the failures among small banks;

(3) public confidence in the equity of the deposit insurance system has been shaken by the too-big-to-fail policy—a policy which granted less Federal protection to the depositors in smaller banks, such as the Freedom National Bank in Harlem, than to depositors in larger banks, such as the Bank of New England;

(4) public confidence in the soundness and equity of the deposit insurance system has been shaken by the United States Government's practice of covering foreign deposits with Federal deposit insurance but not assessing those deposits with deposit insurance premiums;

(5) this practice has resulted in smaller community banks being charged deposit insurance premiums on a higher percentage of their deposit base than their larger competitors;

(6) foreign deposits are not insured deposits under the Federal Deposit Insurance Act; and

(7) this Act take important steps to address the too-big-to-fail policy and to end the unauthorized coverage of unassessed foreign deposits.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that any final banking legislation should make it clear that foreign deposits are not covered by deposit insurance unless those deposits are assessed for that coverage.

Mr. KOHL. Mr. President, I believe the amendment is self-explanatory. It lays out, in a sense-of-the-Senate resolution, the principles of fairness and soundness embodied in the original amendment and it directs the conferees to preserve the steps that S. 543 now takes to enact those principles into law.

I am proud to point out that there are others in this body who also very much wanted to see the principles stated in this sense-of-the-Senate enacted into law. The amendment I originally intended to offer was cosponsored by Senators GRASSLEY, CONRAD, EXON, GRAHAM, BROWN, FOWLER, BURNS, ADAMS, HARKIN, HEFLIN, SIMON, ROBB, LOTT, and HOLLINGS. They all believe strongly in the equity of assessing foreign deposits. Also, the compromise we have reached today is due in great part to the efforts of Senator SASSER, and he deserves recognition as well.

Let me describe what we have under current law.

Under current law, foreign deposits are insured—for free. The U.S. Government, through the FDIC, has a clear and longstanding policy of covering the deposits held by U.S. banks in out-of-country branches if those U.S. banks fail.

There is nothing inherently wrong with doing that. But what is wrong is that foreign deposits are not assessed for deposit insurance premiums.

In other words, under the current system, banks with foreign deposits get Federal insurance on these deposits, but they do not pay for it.

Not only does that make no sense, it actually does some damage. The cost of insuring foreign deposits is unfairly borne by banks which have no such liabilities.

The Nation's nine largest banks hold over 75 percent all the foreign deposits held by U.S. institutions. In fact, those nine banks have 50 percent of all their deposits in foreign offices. Since foreign deposits are not charged deposit insurance premiums, the Nation's biggest banks end up paying deposit insurance premiums on only about 50 percent of their deposit base.

Compare that with the typical community bank—the kind of bank that serves the small businesses, property owners, and local government in most of the towns in your State. That bank will usually pay deposit insurance premiums on up to 90 percent of its deposit base.

That is what we have now, an inequitable system that places an unjustified burden on our local, smaller, community based banks. To correct that problem, I wanted to assess premiums on foreign deposits and nondeposit liabilities. But the big banks did not want to see that happen. Which brings us to the approach contained in the bill.

Essentially, the bill does say that we will not cover foreign deposits. But, because the Banking Committee recognizes that S. 543 does not shut off all opportunities for the BIF to make foreign deposits whole, the bill also contains a fall-back provision. That provision says that if the BIF ever again has to cover foreign deposits, in a bank failure a special assessment will be imposed on all banks that hold foreign deposits. That assessment will be sufficient to reimburse the bank insurance fund for the cost of the coverage.

As a concept that is not bad. Not all good, but not all bad either. At least the community banks will not end up paying for free insurance coverage received by their large competitors. But the language of the committee bill, in my judgment, contained numerous loopholes which might have prevented the special assessment from fully compensating the insurance fund.

The compromise amendment the committee has agreed to accept closes those loopholes and makes the approach in the bill more effective.

To that degree, the compromise deserves our support. And it has mine.

But I would be less than honest if I did not express my disappointment that we were not able to get more.

While community banks will no longer have to subsidize large banks, large banks will not be paying premiums into an integrated insurance system. They will have their own segregated account to cover foreign depos-

its, an account that operates only for their benefit.

That bothers me because it is one more example of how Congress and the administration favor large financial institutions. Sometimes I believe we have become so enamored of the big bank conglomerate that we have forgotten the vital role community banks play in our local economy. This country was build from the grassroots up, and it prospers today because of the grassroots—our small businessmen, our farmers, our average working families. I cannot understand why we are so willing to push an unfair burden on the banks that serve these folks. Increase the international competitiveness of big U.S. banks, by all means. But not by pushing out the banks whose business is confined to their own towns and neighborhoods.

When the Government strikes out at the competitiveness of these local banks—as we have with our current, biased deposit insurance system—we strike out at community development and neighborhood vitality. When the Government backs laws and regulations that treat small and large banks fairly, we champion the small business, the farmer, the average saver, the first time homeowner, all the real people who make up America's diverse and widespread economy.

The compromise before us takes a small step toward the goal of a deposit insurance system that values big and small banks alike. And in the months ahead, I hope we will continue to address the inequities that exist and threaten our community-based banks.

I urge my colleagues to give the Sense of the Senate before us their support. A solid vote on this resolution today will send a clear message to the conference committee: Do not miss this opportunity to end the unfair practice of granting free deposit insurance to banks with foreign deposits.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. CONRAD. Mr. President, I rise today to express my strong support for Senator KOHL's sense-of-the-Senate resolution regarding foreign deposits. This amendment makes it very clear that the current deposit insurance system is unfair and must be changed. Senator KOHL originally intended to offer an amendment to strengthen the fairness and soundness of our deposit insurance system by assessing foreign deposits and nondeposit liabilities for deposit insurance premiums, and I planned to cosponsor that amendment because it addressed a fundamental unfairness in the way deposit insurance premiums are now assessed.

Currently, banks are assessed a flat rate insurance premium only on their domestic deposits. No assessment is charged for foreign deposits. Under this system many large banks with huge foreign deposits are now paying insurance on only a fraction—and in some cases a small fraction—of their total deposit base. Yet under the too-big-to-fail policy of the FDIC every cent of these deposits—both domestic and foreign—is routinely covered by our deposit insurance system when these banks fail. Thus, even though they pay less than their fair share of insurance premiums, large banks receive more than their fair share of insurance coverage.

Meanwhile, smaller and community banks do not accept significant foreign deposits. As the sponsor of this amendment, Senator KOHL, has so aptly put it, these banks do not have offices in the Bahamas to accept deposits. Because the vast bulk of their deposits are domestic deposits on which insurance is assessed, community banks—in marked contrast to their larger competitors—pay deposit assessments of virtually their entire deposit base. Yet, unlike the big banks, small banks cannot expect to get anything but the bare minimum of coverage if they should fail.

This means that small banks in North Dakota and across the country are subsidizing insurance coverage for large money center banks and their foreign depositors. Even though North Dakota banks have cost the Bank Insurance Fund virtually nothing, their assessments have skyrocketed over the last several years to finance the bailouts of their much larger competitors—including coverage for hundreds of millions of uninsured foreign deposits which the FDIC chose to make whole under its too-big-to-fail policy. If this is not changed, these safe, sound banks in North Dakota will continue to pay inflated premiums to pay for the failed risk-taking of these large banks.

Mr. President, this is not fair. And it is not sound. By giving large banks a much smaller relative interest in the level of deposit insurance premiums, it does nothing to encourage large banks or their foreign depositors to take fewer risks.

The amendment my colleague from Wisconsin, Senator KOHL, originally intended to offer remedied this unfair and unsound system by treating all liabilities equally, so that small banks would no longer subsidize the insurance coverage of the large money center banks. And it helped to ensure that the burden of paying for bank failures did not fall unfairly on community banks or taxpayers. By assessing premiums on the same deposit base for all banks, it would have ensured that small community banks would not bear more than their fair share of the burden of bailing out big banks and their foreign deposits. And by increasing funding for the Bank Insurance Fund, this amendment would have reduced the likelihood that taxpayers would have to pay for bank failures.

Mr. President, I supported this proposal because I think it would have been the best way of ensuring that no uninsured liabilities are covered under the too-big-to-fail policy. I still think that this would have been the best policy, and I think that the Senate would have adopted the Kohl proposal because it is the best way of ensuring that the current competitive disadvantage is removed from community banks.

However, Mr. President, the reality is that such a provision would most likely have been dropped in conference. For that reason I am supporting the compromise that Senator KOHL has worked out with the Banking Committee. The compromise strengthens the section of the bill regarding coverage of foreign deposits under the too-big-to-fail policy by requiring the FDIC immediately to impose a special assessment on all foreign deposits sufficient to recover any loss that the FDIC incurs through such coverage. It is my hope that the reformed too-big-to-fail policy will prevent the FDIC from bailing out foreign deposits. But past history and the realities of the structure of our financial system suggest that, despite the reforms in this legislation, the FDIC may at some point have to cover foreign deposits at large banks in order to avert the collapse of our financial system. The Kohl amendment makes clear, however, that this will not be a free ride for the large banks and their foreign depositors, that smaller community banks will no longer have to pay an unfair share of the costs of such coverage of foreign deposits. Instead, the Kohl amendment makes clear that foreign deposits themselves will—as they should be—the source of funds to cover any bailout of foreign deposits.

Mr. President, I remain unhappy that foreign deposits might still be covered indirectly under the too-big-to-fail policy when no premiums have been assessed on these deposits. However, as I see it, we have two choices. We can support the compromise the managers of the bill have accepted and the sense-of-the-Senate resolution that this compromise be retained in conference. Or we can win a symbolic but meaningless victory by insisting on assessing foreign deposits only to have such a provision removed in conference. This latter course would leave us with no progress whatsoever. I believe it is more important to make significant progress toward redressing the current unfairness by supporting the compromise than that it is to win such a symbolic victory. For that reason I am supporting the compromise and the sense-of-the-Senate resolution, and I urge the conference committee and the regulators to ensure that no uninsured foreign de-

posits are covered by deposit insurance unless those deposits are assessed fair deposit insurance premiums for that coverage.

Mr. RIEGLE. Mr. President, will the Senator yield at this point?

Mr. KOHL. I yield.

Mr. RIEGLE. Mr. President, we have now established that we will vote on the Senator's amendment. There are a number of Senators on both sides who are flying back in at this hour from their home States. And so if the Senator is agreeable, I would like to be able to stack the vote later in the afternoon, probably sometime around 4:30 p.m. or later at a time we agree on and the majority leader will concur in, and then we will place other votes where the votes are ordered in sequence.

But the vote on the amendment of the Senator from Wisconsin will come first. If we would agree with that, that would be very helpful.

Mr. KOHL. I appreciate and agree with that.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, I wish to send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to laying aside the pending Kohl amendment for purposes of the amendment?

Mr. DIXON. I ask unanimous consent that the existing and pending amendment be laid aside for the consideration of this amendment.

Mr. D'AMATO. Mr. President, if I might, I believe the Senator from Iowa was waiting to speak on the Kohl amendment.

Mr. DIXON. I apologize to my friend from Iowa. I thought Kohl amendment was concluded by the colloquy that took place between my friend, the manager, and the Senator from Wisconsin. But if my friend from Iowa wanted to speak on that amendment, I will yield, of course, until this amendment is disposed of. I thought my general understanding was we concluded everything and we vote on it later this evening.

I will yield to him to continue his remarks, with the understanding that I may then be recognized again, without losing my right to the floor for the purpose of offering another amendment.

The PRESIDING OFFICER. Is there objection?

Mr. RIEGLE. Reserving the right to object, only to ask then, are we clear that the Kohl amendment; that is now the basis of the unanimous consent, will be temporarily set aside to be voted on later so that other amendments will be in order after these comments are made?

Mr. DIXON. May I say to the managers, Mr. President, I have no objection to voting upon mine later in the day, as well.

The PRESIDING OFFICER. That is the understanding of the Chair.

Under the unanimous consent agreement that has been propounded by the Senator from Illinois, as the Chair understands it, the Senator from Iowa is to be recognized for the purpose of addressing the Kohl amendment, and immediately thereafter the Senator from Illinois is to be recognized for the purpose of offering his amendment.

Mr. DIXON. May I have unanimous consent to set aside the managers' amendment, or whatever amendment is pending, so that we may go to the consideration of mine?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. I might just say for clarification, the only amendment now pending is the one from the Senator from Wisconsin, which will be voted on but has been set aside. And then, I gather, after the Senator from Iowa speaks, or anyone else, on this issue, then the Senator from Illinois will be recognized to offer his amendment.

The PRESIDING OFFICER. Without objection, that will be the order.

The Senator from Iowa [Mr. GRASSLEY] is recognized.

Mr. GRASSLEY. Mr. President, I thank you, and I thank the Senator from Illinois for his courtesy.

I also rise in support of the Kohl amendment. I am a cosponsor of that amendment. I want the body to know, however, that in actual fact, I am not satisfied with only what is in the Kohl amendment. I am not satisfied with only what was in the technical amendment accepted by the bill managers. Obviously, I was not satisfied with what is in the original bill. I was a supporter of the original Kohl proposal, which will not be offered now, which would assess foreign deposits on the same basis as all other deposits that are assessed.

I state my position, being a purist in this area, because I have been frustrated over the last several years that we have a large amount of money out there that is not paying FDIC insurance. I think it is an issue of fundamental unfairness to American domestic deposits, and unfairness to small banks in America, where practically all of their deposits are assessed for FDIC insurance. And then, in a sense, because there is no free lunch in American society, somebody ends up paying for this. The American public at large eventually ends up picking up the bill, because when costs go up, those costs are passed on to the consumer.

So the issue of assessing foreign deposits for the bank insurance fund is an issue of fairness to the American people.

Now, I know the other side of the argument. Opponents of the proposal on foreign deposits assessment continue to raise the issue "international competitiveness."

Now, Mr. President, I do not think there is a person in this body that is not completely for international competitiveness. But I see an overriding concern here, and that is that we have a crisis nationally. While we are slowly coming out of the most recent recession, we are still dealing with its side effects, such as high unemployment in certain areas of the country.

It seems to me that we cannot be competitive in the world market if we are not strong here at home. And the banking system of the United States, particularly in the rural communities of America, has something to do with the economic strength of our domestic economy. So, that is why the issue of assessing foreign deposits is so important.

As a Senator from Iowa, I am obviously concerned with the small community banks, not only in my State but in every rural region of America. Recent increases in bank insurance fund assessment rates have been harmful to these independent banks. In 1990, as we know, banks were assessed just 8.3 cents for each $100 deposited. This rate then went up to 19½ cents in 1991, and most recently, to 23 cents. That is an increase of almost 150 percent in just 2 years. When a small business is dealing with tight profit margins, this additional burden can be devastating. And in the case of banks, the effect is not just devastating to the strength of that local bank, but in turn it has a ripple effect through the economies of rural America.

What business, Mr. President, can afford increases of 150 percent in just 2 years and still be competitive? The thing that makes this increase particularly unfair is that it is applied unequally. And it is unequal because banks with foreign deposits do not carry an equivalent burden but get an equal benefit.

Mr. President, this is the issue before the Congress today on competitiveness in our country. So let us look at the issue.

According to the FDIC, 51 percent of the deposits of America's nine largest banks are kept in foreign markets. Since the FDIC has a de facto policy of protecting foreign deposits also, this means that big banks are getting 100 percent protection and only paying for 49 percent of it.

Now wouldn't we all like a deal as good as that deal?

But is that fair? I believe it is not fair. In the period between 1982 and 1988, small community banks were allowed to fail in record numbers. Just look at the numbers. During that same period, only two large banks were allowed to fail. However, the FDIC allowed over 200 small banks to fail. In my own State of Iowa, 39 banks were closed.

What we need to remember is that small banks are the lifeblood of the

community, the economic lifeblood of our small communities. Small banks make loans to rural farmers and to small business people. It is not the large international banks, which have half of their deposits overseas, that make loans in rural America. It is the local community bank that keeps its money at home.

We hear a lot about rural economic development. Well, here is a chance to support rural economic development by making the insurance system of our Nation's banks equitable. So I guess I am tired, in this context, of hearing of international competitiveness from banks that do not invest one red cent in the small businesses of our nonmetropolitan areas. We have to think of national competitiveness also.

Furthermore, when we allow this unfair burden to rest on community banks, the cost is eventually passed on to consumers. These consumers are all constituents of yours and mine. In this time of increased unemployment and tight budgets, any additional burden on the consumer is difficult and negative toward the economy.

We have considered the issue of assessing foreign deposits several times in the last few years. I think it is high time that we did the right thing for competitiveness for the folks at home and make the insurance system treat all deposits the same.

Of course, as I said, I am very disappointed that the original Kohl proposal is not going to be offered. I think it was a good proposal. I supported it then, and I would be supporting it if it were offered. However, the goal that we want to reach is to simply say that only deposits that pay premiums will receive insurance.

How many of us would like to have insurance for free? Well, there are a lot of deposits in our country that in a de facto way have this free insurance.

So I am going to support the proposal before us. I hope that there is a strong vote for this sense-of-the-Senate resolution. And I hope that somewhere in our administrative process, where bank regulators and financial institution administrators have some leeway, that they will take a strong vote on this Kohl sense-of-the-Senate resolution and use it as a lever to make sure that we get maximum assessment of foreign deposits—not with a goal in itself of just collecting that money but with the goal to see that all banks pay a fair share toward the bank insurance fund.

I yield the floor.

Mr. D'AMATO. Mr. President, I ask unanimous consent I may be permitted to proceed for 3 minutes as in morning business and then the Senator from Illinois would be in order to follow, without his losing any of his rights pursuant to the previous agreement.

The PRESIDING OFFICER. Is there objection?.

Mr. DIXON. I have no objection to that if I am required to yield only for 3 minutes under a unanimous-consent agreement where we return the floor to me, Mr. President, for the purpose of offering my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New York [Mr. D'AMATO] is recognized for 3 minutes.

CREDIT CARDS

Mr. D'AMATO. Mr. President, there is an old axiom in law school. It says, "If you have the facts, pound the facts; if you have the law, pound the law; and, if you have neither, just pound the table." That, Mr. President, is what we heard—a lot of pseudo-economists, some who claim to be economists, some who were retained by the banks, some who work for the bankers, and some who are the best friends of the bankers, including some people who ought to know better, some who are in high places in this Government.

These people attributed Friday's drop in the stock market, without equivocation, to the legislation that was passed in the Senate on floating credit card interest rate caps. Not once did I hear the Secretary of the Treasury talk about the fact that the double witching hour, which took place at 3 p.m., on Friday, brought about the biggest bulk of that market collapse. Not once did we hear talk about the biotech stocks, which have been overinflated, and some of which dropped as much as 38 percent in that 1 day. This had nothing to do with credit cards. Not once did we have an analysis of the facts. What we heard was a lot of pounding on the table. Not once did we examine who the big board loss leaders were. If we did, we would have seen Aetna, Boeing, IBM, and General Motors. How did the drop in these stocks have any connection to credit card legislation? Aetna dropped because the company had an additional $1.3 billion in loan loss reserves to set aside.

Mr. President, this Government has pursued a policy to lower interest rates, resulting in the lowering of the cost of money to the banks. The discount rate has dropped almost 7 to 4.5 percent. The prime rate has come down to 7.5 percent. This has all been done in efforts to stimulate the economy out of the recession. When I hear leaders of this country say we are not in a recession, I say, "Wake up and find out what the real world is about," because we are in a recession and banks are charging consumers unnecessarily high rates of interest on credit cards so that the banks can bail themselves out of bad loans. This gouging the middle class simply is not going to help the recession. That is what the credit card legislation was intended to help.

The Chairman of the Federal Reserve Board sent to Congressman WYLIE a letter that has been widely circulated. He says:

The Board believes that the functioning of the U.S. economy is served best when credit is allocated through competitive market processes, rather than being subject to artificial constraints.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. D'AMATO. I agree with Chairman Greenspan. I wonder where the Federal Reserve Board has been and why it is that we do not have that truly free economic competition taking place. It should be taking place. That is why this Senator was forced to offer legislation.

If there was free economic competition, 7 out of 10 of the largest issuers of credit cards would not charge the exact same interest rate, 19.8 percent. Where are the regulators? Tell me about competition. There has not been any competition because the little guy, the working middle-class guy with good credit, has been forced to pay these high interest rates on his credit card debt. The consumer has been gouged to help those banks that have made bad loans all around the world. In return, the working middle-class consumer has given these banks profits that are unconscionable.

I yield the floor and I thank my friend from Illinois.

EXHIBIT 1

BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, DC, November 15, 1991.

Hon. CHALMERS WYLIE,
Ranking Minority Member, Committee on Banking, Finance and Urban Affairs, Washington, DC.

DEAR CONGRESSMAN: I am responding to your request for the Board's views on legislation to place a statutory cap on credit card interest rates. The Board of Governors has considered the proposed cap and believes it will have a number of possible serious adverse effects on the economy and financial institutions. The cap would greatly reduce net returns on issuing many credit cards. In response, lenders undoubtedly would cut back sharply on the availability of credit cards, especially to borrowers who are more likely to encounter problems meeting payment obligations. Such actions could adversely effect consumer spending and the economy. The negative effect on banks' earnings will put further pressure on their ability to generate or raise capital, at a time when concerns about capital positions are already contributing to restraint on bank lending.

Considerable information about the various credit-card plans already is available to consumers, enabling them to select cards with the most attractive features, including low rates. In general, the Board believes that the functioning of the U.S. economy is served best when credit is allocated through competitive market processes, rather than being subject to artificial constraints.

Sincerely,

ALAN GREENSPAN,
Chairman.

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1991

The Senate continued with the consideration of the bill.

AMENDMENT NO. 1352

Mr. DIXON. Mr. President, I believe the amendment is at the desk, is it not? I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Illinois [Mr. DIXON] proposes an amendment numbered 1352.

Mr. DIXON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. DIXON. Mr. President, I rise today as chairman of the Consumer and Regulatory Affairs Subcommittee of the Banking Committee to offer an amendment to streamline the board structure of the Resolution Trust Corporation and to make other needed reforms. My amendment, quite frankly, is identical to S. 1943, which Senator RIEGLE and I introduced on November 7. Senators DODD, SANFORD, GRAHAM, WIRTH, and Senator KERREY, of Nebraska, are cosponsors of this legislation.

At the outset, I want to make it clear why I am offering this amendment to this bill and not on the RTC funding bill. The reason is very simple, Mr. President. We are running out of time. This is very likely the last full week of the Senate session. We have not yet taken up the RTC funding bill, and by the time we get to it, in my opinion, there will be no effective opportunity to amend that bill. We are going to get into the crunch around here, and we are going to be concerned about getting out, and a lot of momentous decision, just as they are at the end of every one of our sessions, will be disposed of without adequate consideration of all the elements of what we do.

If we are to reform the RTC, I say we have to act now on this bill.

I observe the distinguished Senator in the chair is a member of the committee.

Everybody who knows anything about this knows the RTC badly and desperately needs reforming. For some time, I have been very concerned about the progress of the Resolution Trust Corporation. There have probably been more speeches on the floor of the Senate about that issue in this session than any other question.

I have become more and more alarmed that the RTC is just not operating efficiently. I am equally distressed over the RTC's apparent lack of accountability. In hearings, both before the subcommittee that I chair and the full Banking Committee, I have listened to testimony from representatives from small businesses, from academics, and from the RTC officials, and these hearings demonstrate conclusively and overwhelmingly that the administration's handling of the savings and loan debacle has been poorly conceived and inadequately executed.

Most important, the source of the trouble, according to many, is that the original oversight structure of the RTC was poorly designed by the administration, creating unclear lines of decisionmaking and diffusing needed accountability. My friend, the distinguished senior Senator from Colorado, Senator WIRTH, has what he calls the "spaghetti board." It is the most confusing line-of-authority board ever invented or conceived by the mind of man. It represents how the RTC function takes place now. If ever there was something designed to confuse everybody and hide the ball so nobody knows what is going on, it is the Resolution Trust Corporation, Mr. President.

In hearing after hearing, in letter after letter, in town meeting after town meeting in my State, citizens have voiced their concern over the RTC. The horror stories are mind-boggling. It would take the afternoon—it is 2:30—to tell you the horror stories that have happened under the RTC. Regarding a sale that took place in Texas of the assets of a warehouse valued at $3.5 million; by the time they got finished they turned over to the RTC $50,000. An agent of the RTC had four automobiles to sell, kept one, gave three to friends. The horror stories are mind-boggling. And, sadly, I do not see them diminishing, Mr. President. Two full years after the creation of the RTC, it is still an unwieldy bureaucracy, staffed with career bureaucrats.

Incidentally, most of them do not know how to get rid of real estate and have little understanding of private sector needs.

I say the time to do something about this mess is right now. This Senator and other Members have listened to the repeated assurances that changes would be made and that goals would be met. I have news. That is no news to the many frustrated individuals throughout this country who have been watching this. The assurances keep flooding from the RTC but changes and progress are simply trickling out.

Remember, it was the administration that set up the Resolution Trust Corporation. Mr. President, it was the administration that first told us that the bailout would cost the American taxpayers about $19 billion. Then the administration came to one of our hearings and said, no, we are going to have to reevaluate that. It now looks like $40 billion. They seem to double it every time they come in—I am afraid they will come in one more time, Mr. President. Then they came in and said we got that wrong, $80 billion. And, finally, now they said $160 billion American.

It is the administration that keeps telling us not to change the structure of this RTC. The administration asked Congress to accept their plan for the RTC. But one look at the escalating cost to the taxpayers, exacerbated by the poorly constructed and poorly run RTC emphasizes, in my view, Congress' responsibility to take corrective action, and adding this amendment that I have sent to the desk to this banking bill is just the sort of corrective action Congress ought to take and should take.

Last summer, I introduced a bill to create the position of a chief executive officer of the RTC. It was my hope that we could find a strong independent business person with proven success in the private sector to turn this thing around. Equally important was the goal of increased accountability. I wanted one person to make the decisions. One person to be held accountable. I wanted the buck-passing and the finger-pointing to end. I wanted one person you could praise, one person you could blame, somebody in charge of the store.

After I made that speech, for a long, long time—we had a hearing one time and Secretary Brady was there, the Secretary of the Treasury. He said, you know, you are right. We thought it over, you are right. Since you are right we are going to appoint a chief executive officer, and they have done that now. They selected a CEO for the RTC, and I applaud that. That was a move in the right direction.

The creation of an RTC CEO was an important first step. However, it is not enough, Mr. President. There is concern that the present RTC oversight apparatus might be so diffused and so sprawling as to rob this very CEO that they have appointed of any real potential for success. Instead of establishing a clear link of responsibility, the authority and the accountability of the policies and the operations of the RTC are still divided between two boards. By law, the oversight board is to be held accountable for the RTC, while exclusive authority for management of the corporation is vested in the FDIC. The RTC Board is subject to oversight board supervision for some of its functions but not for others, and clearly this is a confused and an inefficient system.

Recently, the administration proposed a plan to modify the existing dual board structure and this was to be accomplished in part by adding new members to each of the two boards, and then slightly modifying the power to the oversight board.

Unfortunately, Mr. President, this is just a cosmetic face-lift. It does not do anything to attempt to repair the

flawed features of the RTC structure. It is nothing but a facelift, a facelift for the biggest problem in America. And make no mistake about it, when you talk about the economy and you talk about this recession that everybody knows is out there, part of it is this tremendous inventory of assets held by the RTC killing the real estate market, depressing values.

On October 23, I chaired a hearing on the restructuring of the RTC, Mr. President. I am not sure that you were there, but a number of the members of my subcommittee were there. I want to tell you something. The testimony was direct and it was compelling. Dr. Harold Seidman—incidentally, I do not think he is any relation to Bill Seidman. My staff affirms that, he is not. Dr. Harold Seidman, senior fellow at the National Academy of Public Administration, a nonpartisan organization, stated, and I quote directly, Mr. President:

> We do not believe these basic deficiencies in the present structures can be cured by half-way measures and mere tinkering with the membership and functions of the oversight board.

He said do not do halfway measures, do not just tinker, which is what they have done in the House bill that the administration wants. Here is what he went on to say, and I quote directly:

> The creation of a dual board structure for a U.S. Government corporation is utterly without precedent—

Do you hear that, Mr. President?

> utterly without precedent and cannot be justified as necessary to maintain sound management and protect the public interest.

Think of it, the biggest problem in the country is being addressed in a situation utterly without precedent in the history of the Nation.

Mr. Alan Dean, another expert in public administration testified—I quote directly. Now listen to this comment of Mr. Alan Dean, an expert in public administration, a direct comment:

> I have never seen such a jerry-built . . . unsatisfactory structure as that which now exists for the RTC framework.

Now how do you like that?

Mr. President, for some time, I was a little deferential to the administration's views on the RTC structure. But from hearing testimony and complaints over time, this Senator has become convinced that oversight by two boards results in unnecessary confusion and terrible conflict. The administration argues that a two-board structure enhances accountability. But the actual effect, of course, is just the opposite. With two boards, no one is responsible and no one is accountable.

I am determined to give the new RTC CEO, Al Casey, the best possible chance for success. Incidently, I think he is a classy man. Al Casey's background is a sound one. His business experience leads me to believe that in an unfettered capacity as the CEO with the power to do the job and to control the board he can be a huge success. We have to give him the necessary authority to do his job, Mr. President, and then we have to hold him accountable for how he does it. Make Al Casey the man, give him the power, give him the authority, give him the control that everybody does in corporate America.

I am a great believer in the power of one qualified individual to effect significant change. I really believe that can happen. I really believe Al Casey is an individual who can make changes and who can put the RTC back on the right track, but we must be sure that his hands are just not tied.

Mr. Dean stated this:

> To pretend that a confused multiboard structure will be a help to Mr. Casey is simply not the case. * * * I think any objective observer would note, there's absolutely no reason for these two boards, nor would it be difficult for Congress to provide for their elimination.

Mr. President, that is what this amendment does. It addresses many of the RTC's inefficiencies and problems. This amendment simply calls for a single streamlined board of directors chaired by the chief executive officer of the Resolution Trust Corporation. I believe this is one more crucial step in ensuring the S&L cleanup.

As I have said before, I do not believe that all of the RTC's problems will be instantly solved. They will not be. I do believe that a strong CEO serving as chairperson, a chairperson in charge of a streamlined board can begin to take action to solve the bureaucratic nightmares which have plagued the RTC.

Mr. President, this is the only chance the Senate is going to have this year, Mr. President, to reform the RTC's structure. There will be no other opportunity to pass this amendment, and every day we delay reforming the RTC is another day we make the thrift debacle needlessly more costly. So I strongly urge my colleagues to act to give the RTC the kind of structure it needs to do its job right. I urge the Senate to adopt this amendment.

Now, let me simplistically close by explaining to my colleagues what I want to do. What we have now is two Boards. We have on the boards every busy man in the Government. We have the Secretary of the Treasury; we have the Chairperson of the FDIC; we have the Secretary of HUD. I am missing somebody. Anyway, it is full of busy people who do not have time for this.

We have two Boards, unprecedented in the history of this Nation.

Then we have a CEO they picked now; the administration picked the CEO. We have never confirmed that CEO. The CEO does not run it. He works for them. I have been in a lot of businesses in my life and I have been in politics and Government a long time, and you pick a guy and you say you are in charge but we picked you and we can retire you, he works for you. He does not run the cotton-pickin' thing.

So you have now two Boards that will not work. That is what you have. You have a CEO who wants to work. I want to say publcily as a member of the loyal opposition here, a man that in every respect I think is a sound, good man, that can do this job and has the business background and the understanding and the intellectual capacity and the integrity to do a job is working for them.

Well, what do we do in this bill? It is a simple bill. It takes that CEO—and I want to say here publicly I am for Al Casey, so we are not trying to get rid of Casey. It takes the CEO and says let the Senate confirm him and put our imprimatur on his work.

Then it creates only one Board, not two, and that Board consists of five people: The Chief Executive Officer, Al Casey, would be the Chairman. Now he is the boss. He has Senate confirmation and he is the Chairman of the RTC Board, and he is the boss. You have the Secretary of the Treasury, and the Chairperson of the FDIC. Incidentally, they are both very busy people so probably they would not come to most of the meetings. That is OK because we say you can send a representative to sit at the meetings, act as your agent; you do not need to be there; the boss is Al Casey, the Chairman and CEO anyway. And then two public members of the Board picked by the President. A nice, tight, sound, strong, little Board with a tough Chair and a chief executive officer confirmed by the Senate.

Now, Mr. President, if we do that, this RTC thing can be solved. And I think the minute that is done, the message for the financial community, the real estate markets, and a lot of other places will be a strong positive one.

I only say this in conclusion, Mr. President. I believe, if there is one thing we have to address in the Congress, to directly effect a thing in our economy that is eating at the innards of our economy like a cancer, it is to reform this RTC Board and make it work.

I am delighted, Mr. President, to have a vote on this at any time today, later this evening with my colleagues from all over the country where they are attending to their duties in their home States. At the appropriate time, I will ask for the yeas and nays, Mr. President. I can do that now.

I do yield the floor. I see my friend, the distinguished Senator from Utah, who may have occasion to differ with me on this.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah [Mr. GARN].

Mr. GARN. Mr. President, I do not often disagree with my colleague from Illinois, but I certainly do on this particular amendment.

My first objection would be this is simply not the bill to do it. We are having a difficult enough time trying to come up with a banking bill that is literally falling apart both in the House and on the Senate side day by day. While falling apart with the good provisions, it is picking up a lot of very bad public policy, the worst of which so far is the interest rate caps on credit cards. I would say to my colleague from New York that I am not one who would stand here and say the entire reason for the stock market drop last week was due to this amendment; there were other factors. But it was certainly part of it.

But beyond that, if I have ever seen a populist amendment on this floor in 17 years that was such terrible public policy, that is it. I would suggest, if we are going to play that game, we can start interfering with the free market, then I think automobiles are too high, and I suppose we ought to have an amendment out here to cap the price of automobiles. How about housing? How about gasoline? Let us make it a dollar a gallon. That would be a nice round number. It causes a lot of problems for people in my State with long, long distances and a small population, we drive a long way.

I do not know, in the Soviet Union they talk about a free market. We do not seem to understand it here. I understand the politics of it.

I am little bit embarrassed that I was the only one on either side of the aisle last Friday who even spoke against it. It disturbed me almost as much as only 19 people would vote against it. But if we want to add to the banking problem, of course, the Congress of the United States at least in this Senator's opinion is the primary culprit. There are a lot of other players as well.

But if the press ever really wanted to do an investigative job, they would go back over about the last 15 years and look at legislation, what has been done and has not been done, and they would find out the bad public policy that has come out of this body and why the taxpayers are paying so many dollars out there for those errors.

But to play with interest rate ceilings and say we are for free markets around this place, I do not know, maybe we will enjoy watching some of the major banks go down the tubes if we do this. Maybe it will be fun to have more S&L's in the RTC that we are talking about right now where the most valuable asset they have left is their credit card business. So we are trying to sell these, trying to sell the property and we devalue that franchise and then cost the taxpayers some more money. That is what we are doing in that stupid, asinine amendment that was passed last week, all in the name of popularity so that we can tell people out there how great we are.

We are really great. Interest rates are 19.8. We are going to cut them—535 wonderful wizards of the Potomac, arrogant, egotistical, because they were smart enough to convince their constituents to elect them and we are going to sit back here and make these kinds of policy decisions? Then do you know what we will do? We will hold hearings and blame somebody. If that stays on the books, and we have some more failures and some more costs to the taxpayers, we will hold hearings and blame somebody else, anybody but ourselves.

This body is the greatest scapegoat artist in the whole world. Anybody they can find to blame, except ourselves, we will do it. I find it unbelievable that we participate in public policy decisions like that with the old wet finger in the air. Is that all that motivates this body anymore? We do not make any decisions around this place except how it affects our next election? That is what is driving most of the decisions on this banking bill. How does it look?—not is it good public policy; not what is the impact on the taxpayers—because we are such an amorphous group. Oh, blame the administration, whoever the administration is. It does not matter whether it is Republican or Democrat. Congress is going to find somebody else to blame.

Well, now we have an amendment that we are saying "this is the only place or time we can do it." No; that is not correct. We have to fund RTC before we leave or we are going to repeat 1986 all over again. When Congress failed to pass the $15 billion FSLIC recap, it would have dramatically reduced the bill that they are now paying. If we left this session—this Senator wants to leave more than anybody else by Thanksgiving—but we simply cannot adjourn, as we did in October 1986, without providing the funding for the Resolution Trust Corporation. We have been irresponsible before. We will not be this time if we have to stay until Christmas Eve.

So there will be an opportunity to talk about RTC restructuring on the RTC funding bill—not on the banking bill—and confuse it with BIF and all the other problems we have with this bill.

So there will be an opportunity, I say to my friend from Illinois. We have to, if we have to be here on Thanksgiving Day and Christmas Eve. This Senate and this Congress should not adjourn if we do not do anything else but provide BIF recap and RTC funding.

The evidence is there from 1986. That oversight of "so anxious to get out of town" cost the taxpayers of this country tens of billions of dollars; tens of billions of dollars because we failed to do that. This Senator says there is going to be another opportunity. There has to be. We cannot go home until we have taken care of these two problems.

To the substance of the amendment, another little bit of history, I think, is important. The chairman of the Senate Banking Committee and I stood on this floor earlier this year, when we had the last $30 billion approved of RTC funding. Both of us stood on the floor and said, "No more unless there is an improvement in the authorization of that body and some meaningful restructuring." We both said it over and over again in the Banking Committee; that we would not approve a dime more without restructuring.

So I think the record is very clear on my position and on the chairman's position at that time. I think it is also very clear that the Chairman of the FDIC, Bill Seidman, said there had to be some changes. And to be absolutely candid about it, there was disagreement. The administration simply said we will hire a new CEO, get a really good one, and that is sufficient.

The chairman and I said, "No, that is not sufficient." Bill Seidman said, "No, that is not sufficient." And it dragged on all through the spring and summer.

Finally, they were convinced. Bill Seidman had some internal battles there over what kind of restructuring we needed.

First of all, I would say that the Senator from Illinois is absolutely correct. I agree with most of what he said about the failures of the RTC. But who created the RTC? The Congress of the United States and FIRREA.

There were some of us at that time who brought charts out here on the floor, and said, "Look at this ridiculous structure; look at the overlap and duplication; look at some of the provisions we have placed in this bill as far as conflict of interest, "And certainly we have to avoid conflict of interest. But we made it virtually impossible for anybody to buy a failed thrift even if they had an account in the thrift before that."

Some of us talked about that and said, "This is going to cause a lot of problems." I am sorry we were right, and that 2½ years later we are in the mess we are in. You get a little bit frustrated and a little bit angry when you come to the floor when some of these things you said 2½ years ago—and nobody listened—takes place. And when there is a big mess, Congress wants to blame it on somebody else.

How do we escape? How does Congress escape when we pass the laws? I guess we can say, well, the President made us do it. How does he make us do it? We have three independent branches of Government with separation of powers. He cannot make us do anything unless he vetoes and we override it by two-thirds.

So I think we need to look at who set this organization up to begin with, and who has been criticizing it all along. So some of us forced the administration against their will, and Bill Seidman, to come up with some changes.

We said, "Let us do as much as we can without disrupting the organiza-

tion." I did not favor two Boards to begin with. But I think we need to recognize where we are in this process.

The amendment would abolish the RTC Oversight Board and make the RTC an independent agency insulated from administration oversight. Under this amendment expenditures of up to $160 billion of taxpayers' funds and disposition of huge amounts of property and securities would be in the hands of a fully independent board with independent oversight.

If the taxpayers' funds are being spent, the taxpayers should have a role. This cannot only be achieved through an oversight board that is part of an administration and accountable to the public. Expenditures of this magnitude must be subject to oversight by the Secretary of Treasury and not agency bureaucrats. The Comptroller General has stated on numerous occasions that there should be an independent RTC oversight.

Most recently, and on October 8, 1991, he said, "We (the GAO) would like to see included in any restructuring, strong oversight by an entity independent of day-to-day operations of the RTC." Special attention is needed because of the magnitude of both the overall operations of RTC and the funding required. An oversight board meets this criteria and could help assure that the effort does not get off track. Creation of the new board will slow down the RTC just as it is moving more rapidly. Sales of repossessed properties are accelerating. Progress made to date will be slow to stop until an RTC staff waits for policy guidelines for the new board.

I think that is one of the most important reasons to oppose this much restructuring. If we were starting out at the beginning in FIRREA, I suspect I might be supportive at least in general principles, the concept of one board as I did at the time. But after 2½ years of not doing the job very well, when they are finally beginning to move on disposal of property, and finally have Mr. Casey—that is a man with a very fine track record, and I have great confidence that he can get hold of this organization—then we are going to change the structure enough that I know what is going to happen. While they get the new structure in place—the new organization—we will lose another 6 months to a year, and then we will be back on the floor condemning RTC for not moving rapidly enough.

So, at the outset, I might favor this proposal, but certainly not in the middle of the stream. That is why I feel the administration's proposal is a good compromise. Important decisions I believe will be delayed and it will increase taxpayers' costs. This additional delay could require the extending of the life of the RTC beyond 1996. There is an alternative plan that has been developed by former Chairman Seidman of the FDIC and the administration. The plan is supported by the RTC and by Al Casey, the new RTC chief executive officer, and by the administration. It is less disruptive than the proposed amendment. According to people most likely to know, it will do the job.

Mr. Casey is certainly satisfied with it. We should not ignore the Seidman plan by adopting this amendment. The Comptroller General warned Congress in his October 8 letter, "Let me emphasize that in pursuing restructuring"—let us back up. Mr. Bowsher and the GAO favored restructuring as the chairman and I did—but he said,

> Let me emphasize that in pursuing restructuring, careful attention needs to be given to avoiding changes or delays that would be counterproductive to the progress RTC is making in improving its operations and asset disposition strategies.

Former FDIC Chairman Seidman said in his testimony before the Senate Banking Committee on October 24, 1991:

> If you go to one board, you will, I think, disorient things until that new board gets in place and gets its rules and finds out what it wants to do. Given where we are today, I think the way it is set up now is sound.

Again, I make the point that maybe this would have been a good plan in the beginning. In the middle of the stream, changing horses to this extent, I think, will only cause problems. I know the Senator from Illinois well enough. He certainly does not want that to take place.

After a difficult startup period, to say the least, RTC's performance is improving. The oversight board has recruited a strong, experienced CEO, and has given him the power to do his job. I suggest that we give that a chance. Let us not turn back the clock. The FDIC-Treasury plan makes improvements, but does not cause delay. It is a good compromise. It provides clearer roles for the CEO, the operating board, and the oversight board.

We talk about accountability. Mr. Casey said to me personally—and to other Members, and before the Senate Banking Committee—when asked where the buck stops, and who is responsible, and if it does not work, who do you hold accountable, he said, "Me. Under this revised structure, me. I will be the CEO. I am where the buck stops."

That is sufficient for me, and that is what this Congress asked the administration to do—to get a good, tough CEO. In Mr. Casey, we have that, and we have someone to hold accountable, by his own words. In his words, again: "Me," meaning Mr. Casey. He said, "The buck stops here. I will take the responsibility."

I hope my colleagues will defeat this. I do not know, procedurally, how we will proceed. But, I understand, from some changes that have not been involved in this debate, section 204 costs $130 million to $170 million over 5 years in affordable housing changes; from $580 million to $1.1 billion.

There are no offsets in this amendment. So I think it is wrong from a procedural standpoint, but it is also a violation of the Budget Act, with no offsets for a very large increase in costs.

I yield the floor.

(Mr. WELLSTONE assumed the chair.)

Mr. RIEGLE. Mr. President, first of all, I am a cosponsor of the original proposition of the Senator from Illinois on this piece of legislation, although I did not anticipate, in becoming a cosponsor some days ago, that that legislation would be offered on this particular bill.

Frankly, as much as I support the legislation, I have argued from the beginning that we ought to keep these two issues separate. Namely, we ought to take the banking restructuring issues, both the financing that is required to the Federal Deposit Insurance Fund, as well as the banking reforms, and treat those as a package separate and apart from the RTC issues, both the structural changes there and the financing required for the RTC.

I am still, as I stand here now, of the view that these two issues ought to be treated separately, and not in combination.

I recognize, as well, that we are coming down the track toward the end of the session, and time is short. But I want to make a suggestion to the Senator from Illinois for at least his consideration, because he is a very reasonable man. He has done all the work on this issue through his subcommittee, for which I am most appreciative. I support his conclusions, although I am reluctant to see those issues attached to this bill.

I have a couple of thoughts. One is that I wonder if it would be possible to see, in discussions with the administration, if a proposal along this line would be acceptable to them—not on this bill—but in the course of taking up and doing the RTC funding within the next several days; and if, in fact, a discussion could ensue with them to maybe reach some kind of an understanding on that issue, so that there were some assurances there that this issue would be taken up and would be dealt with as the Senator wishes, but not in the context of this legislation. That might be one possibility.

Another possibility might be to, today, treat this idea—I only suggest this to the Senator for his consideration—treat his amendment in the form of a sense-of-the-Senate resolution for the purpose of seeing where the votes lie on this issue, to see if, in fact, the votes are there in the form of a sense-of-the-Senate resolution. And that, in turn, would not only indicate where sentiment is, but I say to the

Senator that it would also be a very powerful signal to the administration of where the view of the Senate is on this issue.

And if the preponderance of opinion agrees with the Senator from Illinois on this issue—on the substance, as does this Senator—then that is an unmistakable signal there to the administration. Hopefully, that would put them into a frame of mind to sit down with us and work this issue out, so that we can take that very difficult RTC funding vote through here with the changes in structure that I think have to accompany it, separate from this bill, so we do not get this set of issues all rolled up into the conference on the banking reform bill. That would be another avenue that might be available which would pursue the same objective.

I must say, I am concerned today that, having myself taken the position that the two bills ought to be treated separately and on separate tracks, I am very reluctant—even though I am a supporter of this approach—to have this particular amendment added to this bill. I do not think it ought to come in the bill as a formal proposal that would have the force of law, because I think we ought to, as I say, keep these two issues separate.

So I just appeal to the Senator from Illinois, in the course of the discussion, just to think about those options as other ways, other avenues that might be open to achieve the very same objective.

Let me say this to the Senator, in terms of my view: While I have the reluctance to see it attached in the form of law in this bill, I feel just as strongly as the Senator from Illinois does about having it done in the context of the RTC funding. So it would be my intention, as one Senator, to stand with the Senator at the time the RTC funding issue is taken up, to see to it that these reforms, structural changes, are in there. I think they are needed.

That is not to say that the Senator from Utah does not have a right to his point of view on this issue. I think the head of the RTC ought to be subject to Senate confirmation. I think the Senator from Illinois is exactly right on this issue. I think we have too many boards, because we have had everybody in charge, but we have had nobody in charge sufficiently.

So I think that consolidation ought to take place. And I think the person, once confirmed to be the head of the RTC, ought to be the person that is the lead horse on the Board of Directors.

And so my thinking lines up with that of the Senator from Illinois, and I think the work he has done has really laid out a major and necessary structural improvement in the RTC.

So what I am saying to the Senator is that I want to stand with him on that issue, and, in the context of taking up the RTC funding, I intend to do exactly that. I will work as hard as I know how to help accomplish that goal, assuming that we have the votes here in the Senate to do it. In the end, the Senate is going to decide that issue. Obviously, the House will have its view on the issue.

But I say to the Senator, he can count on my support and my help in getting this enacted, but I would strongly prefer that we do it in the context of the RTC bill or take the other avenue that I have suggested with respect to trying to work with the administration or the sense of the Senate today with the idea of making it law on the RTC.

Mr. DIXON. May I respond to my friend, the manager, and to my friend, the manager on the other side?

Mr. RIEGLE. I yield to the Senator.

Mr. DIXON. First, let me make this observation: I hear everything the Senator is saying about the RTC and the funding thereof, and that is the place to do it. But I want to say publicly what I said to my friend when he came over here privately and visited with me while my friend, the distinguished Senator from Utah, was expressing his views.

If we leave here next Tuesday or Wednesday—and my sense is the leadership in both Houses wants to do that—I have to say in every meeting I ever attended either at leadership meetings, where I have the privilege by virtue of my position on this side to attend those meetings, our own conferences, or any other place I ever been, it was the stated intention of the people that run these two Houses, the majority leader in this place and the Speaker in the other House, to get out of here before Thanksgiving.

Mr. President, I have been here a few years now, and I have seen what happens in the closing days. I was in the Illinois Legislature, 12 years in the House and 8 years in the Senate, for two decades before that. I saw what happened there. And when you are getting out of here, these matters of great moment can be given short shrift. You are going to have a bill nobody much wants to vote for anyway. Let us be honest about it. RTC funding is not the most delightful issue in front of my colleagues around this place. I can just hear the desire for a voice vote right now instead of the yeas and nays. Maybe I do not have any problem with that, Mr. President, but I think the opportunities for getting this on that bill are somewhere between slim and none, and I have been here long enough to see a few fast balls go by. I do not mean my friend will throw a fast ball by me, and I know he would not try, but I am of the opinion that if we do not address this now, it might not be addressed.

I want to say further about that. The distinguished chairman on the other side knows that I went along with this for a while. In fact, I said do not change the structure of the two Boards because you will meddle with it and it will stop things and we will not get the job done. Every witness we have had in my subcommittee—I think my friend may have been there some of the time—has said that is all malarkey. Changing the structure of the Board at the top is not going to have anything to do with how it functions out in the field.

I actually have from Dr. Harold Seidman—incidentally he pronounced it "side man," not Seidman, as Bill Seidman, and from Alan Dean their direct quotes here in which they say that it will not affect anything. Here is a direct quote:

> It is simply not true that to cut the remaining ties of the FDIC and get rid of surplus board would be disruptive.

Not true. Far from that. It would make people know it would really work for and give Mr. Casey a type of staff that was really his own. Does Mr. Casey not want to be confirmed? He did not say that. Mr. Casey said, "It will be all right with me to be confirmed." I think he would like that. You simply have a situation here where we have an agency of Government that is created in such a way that it cannot function well.

Now I will say another thing, and my friends know this is true. I said about it being unprecedented. So the administration put a witness on the stand and said, "Oh, there is a precedent for this."

I wonder if my friend from Michigan would listen to this part. I know he has a friend and he is conferring with him. He was instrumental. I say to my friend from Michigan, could I have his attention a moment?

One of the witnesses that came to the committee said, well, there is a precedent, the Chrysler bailout. And my friend from Michigan was instrumental in doing the job that saved Chrysler, for which he is entitled to the great thanks of tens of thousands of working people, I do not know how many, in Michigan and a lot of business interests there and all over the country. And he was there. He said that is not true, the Chrysler board was not a dual board like this at all. You know who said that? The then Secretary of the Treasury, who appeared before my subcommittee as a witness, Mr. Miller said, "That is not true; I ran the thing. You know I was there. We had a Board and Chrysler Corp. had a board, but they did not have two Government Boards overlooking one another."

Mr. Miller said that. He was Secretary of the Treasury. My colleague knows him and served in the Senate while he was Secretary of the Treasury. The evidence is replete that this board is a lousy idea, the way it is now formulated. Every person that appeared before us from Government and from the academic field and the stu-

dents of government said, "Awful, won't work, please change it," and the thing I always worried about, was it being disruptive? Every one of them said, "That isn't true at all." Secretary of the Treasury Miller said that is silly, that will not have anything to do with it. Get it running right at the top.

So, my dear friends, if we walk away from this now at the end of this year, we do not come back until January, we do not do much functional stuff of any significance in the first couple of months. I am not being critical; that is the way every legislative body in the world begins, slowly, in the beginning of the year. We are going to lose the chance to do anything about this. I think it would be critical to the interest of our country to do it before we go out this time, and I do not believe we will get a chance to do it on the RTC funding bill. Something is going to happen. I tell you, Mr. President, the manager, my friend, the Senator from Michigan, whom I appreciate in every particular as a fine Senator and a good friend, it is a mistake if we do not do it now.

Mr. RIEGLE. If the Senator will yield, I appreciate the generous personal comments and especially the reference to the Chrysler loan guarantee some years ago, and I am very sympathetic to what he said. I should add a couple other points. You know this idea has been building for some period of time.

Mr. DIXON. Sure.

Mr. RIEGLE. The Senator from Illinois led the hearings in his subcommittee and took the testimony and built the record and brought a recommendation in here now that is fully supported by, I think, what the facts have been and what the testimony has been.

I should also pay a compliment to Senator KERREY, of Nebraska; Senator WIRTH, of Colorado, because, as they foresaw this problem actually back at the beginning and have argued steadfastly now for the better part of 2 years that this kind of change is needed, and the hearings that the Senator has held, I think, have documented that now very forcefully and very clearly.

The question is: Ought we put it in this bill? Quite frankly, as we tried to talk to the administration about RTC restructuring, we have had a hard time getting our phone calls returned on that issue because they have not wanted to deal with that. They wanted to sort of pretend that it is not necessary. I am of the view, and I may be wrong, but my best sense for it would be that I do not think there are 51 votes here for the RTC funding without a restructuring that goes with it. I am saying 51 votes. There will be some votes here, but I am not convinced there are enough votes to pass it. I do not know because we are not to that vote yet. We have not done any kind of formal vote count. That is just my impression of difficulty of marshaling the votes, and it is going to take votes on both sides. You are going to have to have a blend of votes on both sides to come up with the votes on the RTC funding.

Mr. DIXON. If my friend will yield, if I could interrupt right now, I hear that observation. I do not feel compelled to have the vote tonight. I would have the conferences talk about this tomorrow. This amendment as a bill, you know, as a cosponsorship with the Chair talking to me right now, this Senator that chairs a jurisdictional subcommittee, a lot of fine Senators on this side, I would like to discuss it at our conference as to whether we would hold out and exact, as our price for RTC funding, these things in the organizational composition of the board and confirmation of CEO. And I have no problem about Mr. Casey. I say again now that I would support it.

Incidentally, I want to say that the point—and I know that my friend on the other side is listening—I did not know when I offered this amendment that I was putting in the whole bill. I honestly intended just to offer an amendment that dealt with the appointment of a CEO confirmed by the Senate and a five-member Board that I have enunciated on the floor. I did not mean to drag along the other things we had in this bill. If we come to a vote on it ultimately here, I will strip everything but the central theme of the amendment, which is not as ambitious as the bill which had other programs in it. The Senator from Utah is correct. I did not know that. I apologize to my colleagues.

But, of course, we all know as the sponsor I have the right to amend my own amendment and I am going to, so that it only does what I said, confirmation by the Senate of the CEO and a five-member Board where the CEO is Chairman of the Board, with the Secretary of the Treasury, the Chairperson of the FDIC, and two public members.

Mr. RIEGLE. If the Senator would yield further, let me suggest another idea, and then I will get off of this discussion and let others get into it. Let me make another suggestion.

The Senator from Illinois knows this bill is going to carry on over until tomorrow. He has talked about the two conference luncheons and this will afford an opportunity for that issue to arise. If the Senator tonight were to put his amendment in the form of a sense-of-the-Senate resolution, stripping out the other part, he would not forego his option tomorrow to come back in and offer it again drafted as a change in law, as opposed to the sense of the Senate.

But what that might accomplish is this: I would still like to keep these issues separate if I can. I made that representation in the beginning and I think that is the best kind of public policy here if we can do it. But if there were a test of strength on the issue, which a sense-of-the-Senate vote would do, it would send a clear signal out of here, an unmistakable policy as to where the Senate is.

Mr. DIXON. Will the Senator yield?

Mr. RIEGLE. Yes.

Mr. DIXON. I hear that part. And I know my friend from Mississippi wants to say something and I do not want to pursue this at length. But I only want to observe there, that is all well and done and eloquently said, but I and everybody around here have been around here long enough to know that unless the majority leader and minority leader suggest that when the RTC funding comes up it will come up in a framework where we have plenty of time to offer this amendment and have a full debate on the amendment and have a yeas and nays vote on this amendment, we are going to get into the end of the session crush. And I want to predict publicly the last thing we are going to do on the last day at the last moment, when folks are beginning to shake their chains and say, "My car is outside and I want to catch my plane"—now you listen to what I am telling you—is take up RTC funding. I predict it. And I am not that good a prognosticator, but I am good enough to know when I have seen a place work for a long time what is the garbage that you leave for last. And the RTC funding is the garbage left for last. And I want this in there.

Mr. RIEGLE. I say to the Senator—and I am going to yield because others want to speak—I think these other avenues are ones that merit consideration. In the course of the day, I know the Senator is going to talk with Treasury officials and they ought to talk with him on this issue and see if we cannot work something out. I hope a way could be found that would settle this issue separate and apart from this bill.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. LOTT. I thank you, Mr. President, I will not speak too long here, but maybe give the Senator from Michigan and the Senator from Illinois a chance to talk more about how this can be resolved.

I certainly hope that this amendment will not be offered on this bill at this time. It is not in the form that we originally thought it might take. It was very comprehensive and very long, and, I understand from his comments now, that he would limit that considerably. But I hope he would also take the advice of the Senator from Michigan and either withdraw it for discussion at a later time or later date, maybe even next year. Perhaps the sense-of-the-Senate resolution would be a better approach.

I just feel so strongly, as the Senator from Utah was saying, that we have a

very complex, comprehensive banking reform bill here that is extremely difficult by itself. Then, if you add the RTC questions to it—many of which are very legitimate questions and concerns—the likelihood of getting either of them will be even smaller.

With regard to the banking reform bill itself, I believe the best that we can hope for right now is probably the narrowest bill. We should get the BIF recapitalization now, and then give more time to this because there are so many other unsettled issues. There are many amendments still pending at the desk, and we are running out of time.

I think the Senator from Illinois is correct. I do think that RTC funding will be one of the last things to come up here. I also think that later on this week or early next week, probably at the very last moment, we are going to get recapitalization of the bank insurance fund rather than full banking reform. It will be a very narrow approval. And I think probably, in view of all that has already happened, and in looking at the long list of amendments that we have pending here, that that is the best.

The worst of all worlds would be to have banking reform that we have not been careful about or have not thought out with a lot of amendments popping up here on the floor at the last minute. Then we will wind up not only hurting the consumers of this country perhaps, but also destabilizing the bank insurance fund and the health and stability of the commercial banks which are very vital to the economy of this country.

The "too-big-to-fail" doctrine should be stopped in all but the most extraordinary circumstances. The banking industry does not want a government or taxpayer bailout for the fund, but healthy banks, like most of the banks in Mississippi, are tired of paying for the sins of others. In just 2 years, bank insurance premiums have risen from 8⅓ cents per year per $100 deposits to 23 cents per year per $100 deposits.

Congress should adopt a risk-based deposit insurance premium to more fairly distribute the burden and reward healthy banks. In my own State of Mississippi, commercial banks are performing well above the national averages; they are doing quite well. The following statistics indicate that our banks have prospered and grown by providing good service to their communities.

I ask unanimous consent at this point, Mr. President, to have some statistics printed in the RECORD.

There being no objection, the statistics were ordered to be printed in the RECORD, as follows:

	Mississippi banks	U.S. banks
Return on assets (percent)	.87	.67
Return on equity (percent)	11.44	10.27
Equity to assets ratio (percent)	7.65	6.66
Banks losing money (percent)	.82	10.48
Total assets	[1] $21.6	[2] $3.4

[1] In billions.
[2] In trillions.

Mr. LOTT. It is vital to these healthy banks that multiple account coverage continue so that deposits in Mississippi community banks—and other community banks in other States—are not driven out of State.

Brokered deposits have driven up interest costs for banks, leading to increased credit risks to offset them. Because this has greatly increased the risk to the bank insurance fund, I believe these brokered deposits should be prohibited or strictly curtailed.

We must reduce the incredible regulatory burden on banks if they are to remain competitive, both domestically and internationally.

I am concerned many of these amendments will increase that burden, not decrease it.

In light of this, I am considering cosponsoring an amendment which would exempt banks with less than $100 million in assets from CRA reporting requirements. In addition, this amendment would provide banks—with $1 billion or less in assets—a safe harbor in merger negotiations from CRA protests if their ratings in the prior year were outstanding or satisfactory.

I am also considering cosponsoring an amendment which may be offered by my colleagues, Senators COCHRAN and INOUYE which would strike the basic banking/Government check cashing provisions in title V as reported. These requirements can increase banks' liability significantly. Banks are not public entities, but profit-driven private companies. Although most of the banks in Mississippi already offer similar services, the Government should not mandate that they do so or what fees they charge.

I am opposed to the truth-in-savings provision in title V as reported. This would place an additional regulatory burden on banks and, as a matter of fact, I think it would be counter productive to the consumers themselves.

Banks are not on a level playing field with their competition. They are losing business daily to brokerage houses, mutual funds, finance companies, and others who are allowed to offer banking services, but are not regulated like the banking industry is. Banks should be given expanded securities powers with appropriate safeguards to assure the safety and soundness of the bank involved and the insurance fund.

I support the provisions of title X which place limits on the potential lender liability. These days it is difficult enough for banks to make sound loans. They should not be burdened with unwieldy environmental liability for contamination they did not cause.

While I support comprehensive banking reform, I no longer believe such legislation is attainable before adjournment. We should just deal with that realization. I also urge my colleagues, including the Senator from Illinois, to withhold his amendment and amendments like it so that hopefully we can address the funding of both the banking insurance fund and RTC, but wait for a cooler moment to deal with all of these amendments that are pending.

I yield the floor.

Mr. DIXON. Mr. President, I will be very brief because my friend from Colorado will shortly make his speech that is a dynamite speech on the spaghetti charts which shows the state of confusion in which our Government now exists under the present RTC Board.

But let me say I would like to first ask unanimous consent to modify my amendment, which is the right, of course, of the sponsor of the amendment, to conform to what I have stated the amendment is: To wit, the amendment as modified by me will strike all of the amendment except that part that creates a CEO confirmed by the U.S. Senate, and that part that sets up one Board of five members consisting of the CEO as Chairman of the Board, the Secretary of the Treasury, the chairperson of the FDIC and the two public persons.

So I ask unanimous consent at this point to strike subtitles B and C, which I understand will then conform my amendment, may I say to the Senator from Utah, to what I have described.

The PRESIDING OFFICER. Is there objection?

Mr. DIXON. I have a right to amend that.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

Will the Senator send the modification to the desk.

Mr. DIXON. That modification will be sent to the desk momentarily. They are working on it.

The modification follows:

In amendment 1352, strike subtitles B and C beginning on page 29 (top) and adjust table of contents and section and title numbers accordingly.

Mr. DIXON. May I further say if the two managers can hear this—that it is my intention later in the day to ask for the yeas and nays on this amendment, unless something is resolved through the day that would be satisfactory to this Senator and some of my colleagues, like the distinguished senior Senator from Colorado and others like-minded who want to do this.

I am not so wedded to the vehicle I am doing it on as I am personally of the opinion that if we cannot do it now we cannot do it this year. And it is fatal to not do it this year. So I am willing to let the managers pursue this through the day with the majority and minority leader. I would be willing to pursue through noon tomorrow at the

separate political caucuses of the two parties at their luncheon caucuses what might be done. But I want insurance that the people of this country have the opportunity to have their Senators vote on this issue, in apt time to confirm it as the form of our Government's dealing with this crisis when we are forced to vote on a RTC funding bill.

UNANIMOUS-CONSENT AGREEMENT

Mr. RIEGLE. If the Senator will yield, I appreciate the Senator's willingness to not make a final decision now on requiring a rollcall vote on this or otherwise pressing forward pending these discussions. The amendment of the Senator, then, would come in order after the amendment of Senator KOHL, on which there will be a vote later today. While we have not yet set the precise time for that, we will do so a little later. So if the Senator from Illinois intends to press ahead today and wants a vote, presumably it would come in the order right after the Kohl amendment.

So I ask unanimous consent that, if the Senator does press ahead to the vote, and if in fact he seeks the yeas and nays, and the yeas are nays are given, that that vote occur in sequence after the Kohl amendment at a time to be set later today.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. RIEGLE. And that there be no second-degree amendments or any other amendments in order.

The PRESIDING OFFICER. Is there objection?

Mr. GARN. Reserving the right to object; I was conferring on another amendment and did not hear the entire unanimous-consent request.

Mr. RIEGLE. Let me repeat it. It would be if the Senator from Illinois decides to take his amendment to a vote later today and seeks the yeas and nays, and the yeas and nays are granted, that his vote would occur in the sequence following the Kohl amendment, which has already been authorized by the Senate and will occur at an hour later this evening. The Senator has not made a final decision that he is going to take his amendment forward to an up-or-down vote today, so this would keep that option open for him as we try to negotiate an answer that would not require the vote. But it would protect his right to have a vote in that sequence later if he decides to proceed with the vote. That is the request. And that there be no other amendments in order.

Mr. GARN. Further reserving the right to object, and I have no intention to objecting to simply displacing the amendment temporarily, but I thought I heard something about no second-degree amendments.

Mr. RIEGLE. Yes, I added that as well, that his amendment, if it were to be offered for a vote, it would be voted up or down without a second-degree amendment being offered to it.

Mr. GARN. Mr. President, I would not agree to that extension. I agree to change the position of the Senator from Illinois from exactly as it is, parliamentarily speaking, right now to a later date. But I do not want to make any other changes. So if the request is just to delay and give him a place in the pecking order, fine. But I do not want to change the parliamentary procedure as far as having the opportunity to possibly offer second-degree amendments.

Mr. ADAMS. Will the Senator from Michigan yield for a question in his unanimous-consent request?

Mr. RIEGLE. On that issue?

Mr. ADAMS. What I wanted to do was, if he wishes to have further discussion, perhaps to discuss it tomorrow, I was going to ask unanimous consent after my friend from Colorado has made his presentation, if we might set aside the amendment, take up the Adams amendment under a time agreement—and I am willing to agree to 45 minutes or an hour—and place it before the body so they can work out their times as to when they want to do it. I would ask for the yeas and nays but I am willing to have that placed before or after the Senator from Illinois, whatever the managers decide. I wanted to see if that could be done at this time.

The PRESIDING OFFICER. Will the Senator from Michigan please restate his request, UC request?

Mr. RIEGLE. He is just reformulating it in his mind and will restate it now.

That is, with the concurrence obviously of the Senator from Illinois, that the Senator from Illinois's right to seek the yeas and nays on his amendment be part of the unanimous-consent request, and that if he so seeks those yeas and nays later today that his amendment will follow in the order after the Kohl amendment, which has already been scheduled for the yeas and nays. And in addition, that following the disposition of the Dixon amendment, should there be the yeas and nays, that the next amendment that will be in order—assuming the yeas and nays are ordered on it—will be the amendment of the Senator from the State of Washington who hopes to lay that amendment down here shortly and debate it. That would be the extent of the request at this time.

The PRESIDING OFFICER. Is there objection?

Mr. GARN. Reserving the right to object, and I assume this in no way limits further debate on the Dixon amendment?

Mr. DIXON. No.

Mr. RIEGLE. That is correct.

Mr. GARN. I have no objection.

Mr. RIEGLE. Let me further say to the Senator from Washington because there are other amendments backed up, I am not aware of Senators who want to speak at length on the other side of the Senator's position. I would like to suggest maybe we do it with 20 minutes equally divided. Would that suffice?

Mr. ADAMS. I would need about 30, equally divided.

Mr. RIEGLE. Thirty minutes? I add to the unanimous-consent request then that there be 30 minutes equally divided on the Adams amendment.

The PRESIDING OFFICER. Is there objection?

Mr. RIEGLE. And that there be no second-degree amendments in order? Would that be appropriate as well?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. RIEGLE. Very good.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. WIRTH. Mr. President, I am pleased that the Senator from Illinois is raising this issue. It is an issue that I have been concerned about for, now, more than 2 years. I think I introduced the original legislation on this bizarre structure to bail out the savings and loan—the bizarre structure of the RTC.

It truly is bizarre, Mr. President. I would like to show you why. I introduced legislation 2 years ago called the Savings and Loan Simplification Act, or SALSA—SALSA being something that you know about—to just add a little spice to this debate, show people how preposterous this is. Let me show you, if I might, Mr. President—and watch carefully. I want to show you what the structure is we are trying to simplify.

That, Mr. President, is not a computer chip. That is not a map of how to get to Oz; this is an organizational structure, and this is the design of the organizational structure that was used by the head of the RTC to illustrate how the process works. How does FIRREA work, this process that was in the legislation sent up to us by the President?

Can you imagine anything working in this system? It does not. The Senator from Illinois has made the case, and we have made the case, that there ought to be very significant simplification.

As the Senator from Illionis will remember, I showed this chart when we had the RTC Oversight Board up. When did we have the whole RTC Oversight Board up? It took more than a year to get the full RTC Oversight Board to come up, Mr. President. It took more than a year.

Why was that? Because on the RTC Board is Mr. Greenspan, the head of the Federal Reserve, Secretary Kemp, the Secretary of Department of Housing and Urban Development, and Secretary Brady, the Secretary of the Treasury. They are three busy, busy men. They have enormous responsibilities else-

where but they are on this Oversight Board supposed to be overseeing all of this. But they are not alone, Mr. President. There are two other independent members of the Board. And after FIRREA is passed, this Oversight Board with the head of the Fed, head of HUD, and the Secretary of the Treasury on it, it had two members of the Oversight Board. So the Banking Committee asked if we could get the Oversight Board to come up, and they could not come up because it took the administration more than a year to appoint the two independent members of the RTC Oversight Board.

So we could not get the Oversight Board to come up and talk about this.

Finally, the Board, after more than a year, Mr. President, after the Board was completed—this shows, by the way, how serious the administration was about the RTC Oversight Board—after more than a year, they came up and Secretary Kemp said he thought this was really not a fair representation. This had come from them initially, but this was not a fair representation, and I think it probably overstates the case because other departments who do have responsibilities in this—the Justice Department, the Federal Home Loan Bank Board, and so on, the RTC, all of these agencies are in this process somewhere.

So we took down this organization—this might be overstating the case—and we went back to what really happens. And this now, Mr. President, is what really happens in trying to get the S&L management and financing structure to work. This is the real one, not this one. This probably is a little too complicated. It is this more simple version that we are talking about now.

I want to point out, if you look at this, where do you go from here? You have the Federal Reserve, you have the Oversight Board over here, the FDIC and the RTC moving into this, you have the 12 home loan bank boards here, 6 regional advisory boards, and the fact of the matter is the responsibility does not exist anywhere.

We have hearings of the Banking Committee on various issues and it gets bucked—well, it really is not our issue at the RTC, it is the Oversight Board's responsibility—and there are a number of examples of that, of how hide the ball sort of gets played with this structure and a lack of accountability exists with this structure.

Let me give some examples. There was a seller financing proposal that had come up from the organization, come up to the Oversight Board, and as I remember it, the Oversight Board put it into effect but did not actually act on it. They just went ahead and did it. But the Oversight Board ducked the responsibility of approving it. They might not have ducked the responsibility. Maybe they were all so busy or had not been appointed, but they were not around to approve it. That was a major, important issue.

Another was the seller discount and auction program, again, put into effect by the organization. The Oversight Board knew about it but did not act to approve it. Again, a very important item.

Another thing that happened, Mr. President, the Oversight Board has closed meetings so you sort of know maybe what the structure is doing down here. But they have closed meetings up in the Oversight Board. And where is the accountability on that? It is a convenient way of doing things to not have the public know where the decisions were made, a modest $216 billion, I remind my friend from Illinois, $216 billion, and you can have closed meetings on the important decision-making process.

Another example was an amendment which I offered sometime ago related to environmental accountability and trying to make sure that some kind of preference was given to agencies, preference in sort of letting them know about it if there was a property of historic value, of cultural value, of environmental value that the RTC would identify that and make it known to various public agencies who might want to buy that historically or culturally or environmentally sensitive property, to have it out there so people would know that it existed.

In doing that, the RTC has established a memorandum of understanding with the Fish and Wildlife Service so that on environmental properties they received the expertise in areas such as: Are these important? Are these not important? Everybody seemed to think that was a good idea, except the Oversight Board who came in and nixed the memorandum of understanding that had been very carefully worked out all of the way through the line.

What we are trying to do in this, Mr. President, is a very simple process of restructuring this to get rid of the Oversight Board and have a one-Board structure. I asked at the hearings that we had on this if there was anybody there who knew of a similar structure to this, where you have one Board of Directors and then an Oversight Board that oversees the first Board, and accountability gets lost.

The new appointee, Mr. Casey, who was at that point the designee as CEO of the RTC said that, yes, in his experience at American Airlines, there was sort of a dual board structure—that was the American Airlines board, and then there was the American Airlines Holding Co. Then we got into that discussion. He agreed they were really the same people and it was not this kind of an extremely disparate structure.

It is hard to find any model like this because most organizations have built in a certain amount of accountability.

So, after the administration came up, Mr. Robson, the Deputy Secretary of the Treasury, became very unhappy with the idea of SALSA and the streamlining that we are suggesting. Mr. Casey, who was the designee at that point, was carrying the administration's water and understood this streamline and understood this streamlining is necessary. The next panel—G. William Miller, former Secretary of the Treasury and former Chairman of the Federal Reserve; Harold Seidman, senior fellow at the National Academy of Public Administration; and Alan Dean, the fellow of the National Academy of Public Administration—said that this was a "quantum improvement over the status quo." The kind of streamlining that we are suggesting in the bill that has now become the Dixon bill is a quantum improvement.

So I do not think there is any questions about the fact that we ought to do this.

I might note that even at the last hearing where we were discussing this reorganization, it has been noticed for a long time—Secretary Brady could not make it. We understand he is a very busy man. But again a commentary on the fact, you cannot have an oversight board and expect them to do the job when the Secretary of the Treasury, the Secretary of HUD, and the head of the Federal Reserve are all on the Board with enormous responsibilities elsewhere. We have to assign the responsibility and make sure that people feel accountable for that responsibility.

I think this streamlining makes sense. I have been proposing this for a long time. It has now come to be understood, at least among the sponsors of the bill, as sort of a consensus idea, at least among many of us, that this is the way to go.

So I hope we do this. I am sympathetic with what the distinguished chairman of the committee is saying and what the distinguished ranking Republican on the committee is saying about this. I think Senator GARN makes a good point that we have to get the bank insurance fund bill done and get it done as rapidly as possible. I hold no brief as to whether or not this should go on the banking bill or should be put off and put on the RTC bill, or whatever.

But I wanted to take a few minutes now, Mr. President, just to outline why I have been working on this for such a long period of time. It simply makes sense to provide some accountability, to get rid of the button, button, who has the button short of advisory board and RTC Board operating quite independently—and we have many, many examples of where the responsibility simply has not been met as it should be.

So I hope that we do move ahead. I defer to the judgment of Senator RIEGLE and Senator GARN as to how and when we ought to go about doing this.

But I do hope that we do end up with a streamlining. I think that is an important thing to do. I think we have a responsibility to do that. I do not believe that that is going to do harm to Mr. Casey and the job that he has accepted. I think, in fact, it will help to streamline that and give him the responsibility and accountability. He is a very, very experienced and impressive business person with wonderful credentials in terms of running an organization, and I think we want to give him the tools with which to run this organization.

Mr. President, I appreciate the opportunity that I have had to point out the complexity of this organization, and I would be happy to send any Members copies of either chart if they would like to have that. I am sure maybe the Senator from Florida would like an autographed copy of the spaghetti chart, computer chip model here, but I will send it to the Senator in the mail.

Mr. President, I appreciate having these moments, and I hope that we do end up with a simplification proposal at some time on either one of these bills.

I yield the floor.

Mr. MACK addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. MACK. Mr. President, I ask unanimous consent to be able to address the Senate as in morning business not to exceed 3 minutes and then to return to the bill.

Mr. ADAMS. Reserving the right to object, Mr. President, I just want to inquire of the manager if he proceeds if we can then proceed with our amendment so we know what the order is.

Mr. RIEGLE. Yes, I expect that, and I ask unanimous consent that once the Senator from Florida has had the chance to go into morning business for his comments, we return without interruption to the bill; that the Senator from the State of Washington be recognized for 30 minutes, equally divided, on his amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Florida is recognized.

OUR TREATMENT OF HAITIANS

Mr. MACK. Thank you, Mr. President. Last Thursday, I was here making an urgent appeal against a policy for Haitian refugees that contradicts everything we believe in as a nation. I am very sad to say the situation with respect to our treatment of Haitians fleeing the military dictatorship has gone from bad to worse.

At that time, I talked about how freedom, by its nature, and for the sake of its preservation, must be afforded to everyone and not applied selectively. This concept of freedom is the driving force behind the greatness of our country.

At that time, I was concerned about U.S. efforts to seek out third countries who would take the thousand plus Haitian refugees held on Coast Guard cutters or at Guantanamo. That decision to attempt to dump these Haitians on third countries was morally wrong. Others who have fled repression toward our shores are welcomed. In the case of the Haitians, however, we have lost sight of the meaning of freedom.

Now, I understand efforts are underway to return these refugees to Haiti. This is the worst possible scenario. It is an outrage to send innocent people back to a country led by a violent illegal military dictatorship.

What could ever possibly justify even the mention of such a policy? The only moral response can be one of outrage and indignation if such a policy were pursued.

Just last week, the Washington Post reported how the Haitian military stormed a pro-Aristide University gathering with machineguns. This is the environment to which we are returning the Haitians.

If the Haitian refugees are forced to return to the hands of a brutal military regime, their dream of freedom will become their nightmare of repression.

Returning Vietnamese, Russian Jews, Cubans, Nicaraguans, and others back to the repressive countries from which they were fleeing would have been unthinkable. How can we justify it for Haitians?

Our history demands us not to send Haitians back to Haiti at this time. The ultimate solution to the current Haitian crisis is to restore Aristide to his rightful position as that country's democratically elected President. In the interim, however, we have the obligation to treat Haitians fleeing to the United States in a humane manner. I truly hope we follow the right and moral course of action.

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1991

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER (Mr. AKAKA). Under the previous order, the Senator from Washington is recognized.

AMENDMENT NO. 1353

(Purpose: To require the Federal regulatory authorities responsible for approving certain mergers and acquisitions to consider their effect on the work force displaced by those transactions)

Mr. ADAMS. Mr. President, I have an amendment at the desk, and I would ask the clerk to report it, please.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Washington [Mr. ADAMS] proposes an amendment numbered 1353.

Mr. ADAMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 395, after line 25, insert the following new section:

SEC. 308. CONSIDERATION OF DISPLACED WORK FORCE.

(a) FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended in the second sentence by inserting ", the impact on employees of the existing and proposed institutions, including whether the institutions plan to provide reasonable notice to employees well in advance of any layoffs, whether the institutions plan to make any effort to ensure that laid-off employees receive priority in filling future vacancies, whether the institutions will provide specific severance benefits for laid-off employees, and whether and for how long benefits such as health and life insurance and pensions will be continued for laid-off employees," before "and the convenience and needs of the community".

(b) BANK HOLDING COMPANY ACT AMENDMENT.—Section 3(c) of the Bank Holding Company Act of 1956 is amended in the second sentence by inserting "the impact on employees of the existing and proposed institutions, including whether they plan to provide reasonable notice to employees well in advance of any layoffs, whether the institutions plan to make any effort to ensure that laid-off employees receive priority in filling future vacancies, whether the institutions will provide specific severance benefits for laid-off employees, and whether and for how long benefits such as health and life insurance and pensions will be continued for laid-off employees," before "and the convenience and needs of the community".

Mr. ADAMS. Mr. President, I ask if I may have 30 minutes of debate on this amendment, equally divided, and I would request the Chair inform me when I have used 8 minutes. I have one other Senator, maybe two, who wish to use some time.

Mr. President, I had hoped that this amendment might be accepted by both sides. Unfortunately, it has not been. I know it has by Senator RIEGLE, and Senator GARN has some questions about it, which I am sure he will raise in the course of this debate.

This is an amendment to deal with the human costs of bank mergers. We have bank megamergers sweeping the country, and the amendment I am offering will address the fact that employee impact must be considered. My amendment would require Federal regulators simply to consider, when they authorize a bank merger, how the workers will be affected.

Mr. President, I had a great deal of experience with mergers when I was Secretary of Transportation and when I was in the House of Representatives.

It is an amazing thing to me, in this bill, in section 558, we give notice to customers if there is going to be a branch closure, but we do not give any

notice to the employees who will lose their jobs.

We have had some recent tragic cases of this. I saw picket lines in this city, and I am going to describe in a moment the fact there is a massive merger taking place in the State of Washington, were we will have potentially a large number of layoffs.

Let me mention what has happened. The Senate last Thursday voted to allow nationwide interstate banking and interstate branching. That vote is going to open the floodgates for bank mergers across the country. It will allow banks to consolidate, reduce paperwork, eliminate duplicative operations, and do a lot of other things all in the name of healthier banks. In the rush to complete bank mergers, however, the real pain is borne by the workers who will be laid off or their jobs will be lost.

In the last 12 months, 10 of the largest banks in the United States have announced plans to lay off close to 50,000 employees. Studies by McKinsey and Co. and Arthur Andersen accounting firm earlier this year found the banking industry will lose an additional 250,000 to 300,000 jobs during the 1990's. Bank mergers from Boston to California have already resulted in massive layoffs. The 3 mergers already announced this year will affect bank employees in 19 States and the District of Columbia.

The most recent merger announcement, that of the Bank of America and Security Pacific—and this particularly brings me to the floor—endangers the jobs of as many as 20,000 workers. This represents over one-fifth of their 92,000 employees. What is most important, in Washington State alone, where this merger will have its greatest impact, the approval of the merger in its present form may cost over 4,000 employees their jobs. Other examples abound. But I want to concentrate on the fact that 4,000 people in my State should be informed if they are going to lose their jobs, and other things should be done in an attempt, in any merger, to see that the human pain is alleviated. The Wells Fargo merger with Crocker Bank 5 years ago cost 4,000 jobs and closed 168 banks. I could go on. The Bank of New York and the Irving Bank merger reduced employment by 4,000; the Chem Bank/Manufacturers Hanover Bank merger announced in July will cost 6,200 jobs, or 14 percent of the work force.

Federal authorities under current law do not have guidelines to examine the effect of bank mergers on employees or on existing or proposed institutions. When 300,000 employees may lose their jobs in the next decade, should we not consider the impact on them and on their families?

My amendment will address that glaring omission. It would amend the Bank Merger Act and Bank Holding Company Act as follows—and it is not an overwhelming amendment; it is not as much as I would have asked for years ago in the transportation business. But it would amend these acts to include the employee impact as a factor for the Federal regulatory agencies to consider in the merger application process.

Regulators would be asked to do the following:

A. Give reasonable advanced notice of layoffs.

B. Priority for affected employees in filling future vacancies. In other words, employees laid off would have a chance to get their jobs back.

C. Continuation of the affected employee's benefits, such as health and life insurance and pensions. That should be considered, at least for some period of time, so that these people are not immediately without protection.

D. Whether there will be a severance package for laid-off employees. Regulators already look at the convenience and needs of a community when approving a bank merger. My amendment will simply guarantee that employee impact is considered under the convenience and need provisions.

My amendment is simple and it is straightforward. I am not talking about stopping mergers here. The amendment would not require regulators to deny a merger application based solely on employee impact. It would not impede the merger of a troubled bank with a sound bank. It would not hinder the expedited procedures process for troubled institutions. It would not prevent quick action in failed bank mergers.

The consideration of employee impact in mergers should be done. It is not a new issue around here. When I was a Member of the House of Representatives, we addressed employee impact in urban mass transportation takeovers. In the 1970's, we addressed it with the Rail Passenger Service Act, and in the 1973 Reorganization Act we used the precedent established in the New York Dock case, which said with the merger of two ferry companies we guaranteed employment of workers.

We are not even asking any of those things. All we are saying is that we give some notice and we give some feeling for these employees to protect them.

My amendment says to middle-class working men and women that their welfare will not be forgotten even in a rush to increase efficiency.

I would like to point out that section 558 of this bill clearly outlines the customer notification procedures banks must follow when closing branches. Why cannot this be done for employees? That was why I was hopeful this amendment might be accepted. If you are notifying customers, you should notify employees. There it is in black and white. Banks must notify their customers when closing a bank. Yet nowhere in the 11 titles of these bills is there even a mention of employee impact due to job loss. Someone thought about the needs of the customers, but no one thought about the needs of the 300,000 individuals and their families. I urge my colleagues to think about the human cost of bank mergers. Mergers will occur with increasing frequency. Please join me in sending a message to the bank employers throughout this country and to the employees. It is a simple message: You will not be forgotten in the merger mania sweeping the Nation.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. Who yields time?

Mr. ADAMS. Mr. President, how much time is remaining on each side?

The PRESIDING OFFICER. The Senator from Washington has 6 minutes, 40 seconds remaining.

Mr. RIEGLE. Mr. President, I am going to institute a quorum call and ask that the time only be charged against my time for the moment, and reserve the time of the Senator from Washington.

So let me suggest the absence of a quorum.

Mr. DECONCINI. Will the Senator withhold?

Mr. RIEGLE. Yes.

Mr. DECONCINI. I thought the Senator was going to speak on the amendment. But maybe the Senator from Michigan will yield some of his time, 3 or 4 minutes. I am in support of the amendment of the Senator from Washington.

Mr. RIEGLE. Why do I not yield from my time 2 minutes to the Senator from Arizona, and the Senator from Washington can yield whatever he wants from his time.

Mr. DECONCINI. I thank the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I rise in support of the amendment of the Senator from Washington regarding bank mergers and acquisitions. It is very timely and pertinent amendment, particularly for my State of Arizona. We are in the middle of a financial institution merger mania in this country. The theory seems to be that bigger is always better.

Comments we hear from the administration would lead some to believe that if we had four or five megabanks in this country, that would be just fine.

It will not be fine with this Senator, and it would not be fine in my State of Arizona. Bigger banks result in problems and very few solutions and very little constructive improvement in the quality of business life and consumer life for the population that they serve.

Among the major problems they cause is dislocation of the workers, which the amendment of the Senator from Washington addresses, and I think it is very important.

The proposed Bank of America-Security Pacific merger is expected to result in at least 20,000 workers losing their jobs nationwide because two big powerful banks from California are taking up one-third or more of the deposits and assets in Arizona. Each of those particular banks has already absorbed and taken over a number of failed savings and loans.

We are being told that these new banks will be more efficient, but the evidence says otherwise. Clearly it says otherwise. Of the 13 major studies of the economies of scale in banking, only two show any economy of scale in banks of larger than modest size.

According to an article in the spring 1991 issue of the Federal Reserve Bank of Minnesota Quarterly Review, it says the following. Let me quote it:

> The economies of scale are captured at a modest size and, once that size is reached, further increases do not improve profitability. In fact, there is some evidence that very large banking firms are less profitable than middle-sized ones.

Mergers in the financial institution field are bad news, in my opinion. I support the amendment of the Senator from Washington. I believe it will provide one more issue to consider in bank merger cases. I urge my colleagues to adopt this amendment. Arizona is now down to less than a dozen banks, and most of it is due to mergers. Now this merger in the State of Arizona will result in a consolidation of more than 33 percent.

I ask the Senator if he will yield 1 minute.

Mr. ADAMS. I yield 1 minute.

Mr. DECONCINI. If this merger goes through between the Bank of America and Security Pacific Bank, one bank in Arizona would have combined assets and deposits of more than 33 percent of all of Arizona. Is that good for Arizona business and consumers? The answer is resoundingly no. In fact, it is bad. These might as well be foreign-owned banks as far as this Senator is concerned because they are foreign to Arizona.

When these banks came into Arizona, they promised to keep the original name of the banks that they took over, to keep the original employees and the management. And they said they would continue the contributions to the community. They have not. I understand the economy is bad. But they have not fulfilled their commitments to the people of Arizona. I think the Senator from Washington has a very good amendment. I hope the managers will accept this amendment.

ORDER OF PROCEDURE

Mr. RIEGLE. Mr. President, if the Senator will yield for one moment, I ask unanimous consent that the time for the Kohl amendment vote, the first one in the sequence that has been cleared on both sides, be set to start at 5:20 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. I thank the Chair.

Mr. ADAMS. Mr. President, I yield myself 1 minute.

I want to commend the Senator from Arizona and state that we are talking about the same merger. The Bank of America and Security Pacific are going to merge in the State of Washington. And, in the State of Washington, the result will be that the institution will control 51 percent of the assets and over 40 percent of the insured deposits.

It just seems to me when we have something this massive, we not only should be telling the customers, but we should be telling the employees throughout the State that there is going to be a massive change in banking in our State if this goes through.

I just hope that we will begin to look at the people involved, customers and employees, as well as the short-term financial gain that we see talked about very often.

Mr. GARN addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. GARN. Mr. President, this is another one of those amendments that is almost irresistable. I do not know when I have been on the Senate floor on a banking bill where we are dealing with so many issues that sound good. I must say, I do not like to constantly stand up here and talk about what is good public policy and what is good for the taxpayers when you are talking against interest rate ceilings to lower people's costs on their credit cards.

Now we are talking about: Is it not fair to give employees as much advance notice as possible and severance pay and all of that? I cannot argue against that position. It sounds good; it is reasonable. This Senator does not like to see people laid off involuntarily with proper notice under any circumstances, whether it is a bank or other businesses.

What we are constantly doing is interfering with the operation of a free market. When I look at that list of banks that are in trouble, this huge list of S&L's that the taxpayers are paying to bail out, this Senator has to place his first obligation with the taxpayer. If we adopt amendments of this kind, as good as they sound and as fair as they may be, we are placing the taxpayer in further jeopardy, because it is rather interesting that if a bank fails and all the employees lose their jobs, this amendment does not apply. But if two banks want to merge to save jobs, because they are marginal—and most of the mergers that are taking place are because of the difficulties of the bank system and why we are, for the first time in the history of the FDIC, talking about these loans in order to recapitalize the bank insurance fund, and we tell people that all these factors have to be considered again, as fair as they are, in a merger—then we cause problems with that merger, which, in many cases, the reason that these banks are in trouble not only is because of bad loans they have made but because of overstaffing and too many branches, too much expansion too fast.

Then when they get us in trouble, and we are risking taxpayers' money. Then we go back and say that is fine. But now you have to go through all of this process. I realize it is not mandatory.

I have been around this place long enough to know the feeding frenzy of attorneys and what will take place. Do this, and it only requires them to consider it. And then some attorney grabs onto that and comes back, gets a group of employees who are laid off and says: You did not consider these factors.

Maybe the problem here is how we reform the legal system in this country, which this Senator thinks has become a disgrace in many areas. We are so sue happy, so litigious that nobody is at fault for anything, except somebody else. There is no individual responsibility left in this country, no accountability for one's actions. You have seen the ads with the neck braces, "Your attorney is only as far away as a call;" the ambulance and airplane chasers and the incredible costs.

That is the real problem, as I see it, with this amendment: the possibilities for litigation, and causing problems with mergers where these institutions are trying to do exactly what we tell them to do—clean up their act and be more efficient. It is one of those difficult ones.

The Senator from Washington is absolutely correct in the fairness aspect of this. But this Senator has to look at the impact of the most horrendous financial problem we have ever had in this country, as far as our traditional depository institutions, and always come down on the side of not only what looks fair, good and is politically popular, but what is good for this system. I think the taxpayers are carrying enough of a burden now, without the potential to add to it.

So I, unfortunately, must oppose this amendment.

I yield the floor.

Mr. RIEGLE. Mr. President, I have talked with the Senator from Washington, and have suggested to him that he consider converting this amendment into a sense-of-the-Senate resolution. I have actually sent him a draft of language that would attempt to do that. I am wondering if he were to do that—I, for one, would feel that we should accept such an amendment. I think it gives useful guidance to the regulators.

I am wondering, if it were put in the form of a sense-of-the-Senate resolu-

tion, if the Senator from Utah might be prepared to accept it in that form, and therefore the committee could accept the amendment if it were done in that fashion?

Mr. GARN. I thank the chairman. I would be willing to accept it as a sense-of-the-Senate, because it sends a message out there, and that is quite different than an amendment attached to the bill. Yet, I think it might have some good purposes in that form, without getting into the problems that I foresee as an amendment.

Mr. ADAMS. Mr. President, how much time is left on the amendment?

The PRESIDING OFFICER. The Senator from Washington has 5 minutes remaining.

Mr. ADAMS. How much does the Senator from Michigan have?

The PRESIDING OFFICER. Five minutes 30 seconds.

Mr. ADAMS. I suggest the absence of a quorum.

Mr. CONRAD. Will the Senator withhold?

Mr. ADAMS. Yes; I withhold that request.

Mr. CONRAD. Mr. President, I ask unanimous consent that I be allowed to speak for 10 minutes as in morning business.

Mr. RIEGLE. Reserving the right to object, and I will not object, I take it that it is outside of the scope of the banking bill?

Mr. CONRAD. No. It is with respect to the question of the cap on credit cards rates, so it is with respect to the banking bill but not with respect to this amendment. I would be happy, if the Senate was prepared, to return to this amendment, to be interrupted.

Mr. RIEGLE. Very good, I have no objection.

Mr. ADAMS. I have no objection.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

A CAP ON CREDIT CARD RATES

Mr. CONRAD. Mr. President, we have heard a lot of talk in the last 72 hours that the Senate action to put a cap on credit card rates is the reason for the precipitous fall in the stock market on Friday.

Mr. President, that is absolutely bogus. That is an argument by the big banks that are looking for a scapegoat to blame their policies on of keeping credit card interest rates at unconscionable levels. No one should be fooled in this country that what caused the stock market collapse, or the substantial rundown, on Friday was a result of credit cards, was the question of credit card interest rates.

I refer my colleagues to a column that appeared in the Washington Post on the 17th of this month. Here is what they said:

No single event caused the massacre. But there have been a number of factors—all related to the economy in one way or another—that caused pressure to build over the past few weeks. It boils down to this: The U.S. economy, despite the best efforts of the Federal Reserve Board, isn't showing any noticeable signs of strength. And inflation, at least on the wholesale level, is beginning to cause concern.

Those two events, taken together, could mean that the Fed will be unable to cut interest rates as aggressively in the months ahead as it has been doing for the past 2 years.

And that isn't what Wall Street wants.

Mr. President, that is the fundamental truth. What caused the stock market to go down on Friday is the underlying weakness of this economy, coupled with the fact that we have had a whole series of announcements last week on economic indicators that tell us that this economy is not strengthening.

Mr. President, I refer my colleagues to the New York Times, first page of the business section on the 18th. That article is entitled "Market's Message: No Recovery Yet."

Let me read some selected elements from this article that point out what the real factors were causing the sharp drop in the stock market on Friday.

The New York Times reports:

The sudden 120-point drop in the Dow Jones industrial average on Friday ended a week in which new economic data seemed to provide convincing evidence that the current recession is not behaving like other post-World War II recessions, and that the much-anticipated economic upturn is still weeks or months away.

Mr. President, that article goes on to report:

The two most convincing numbers of this count—made public on Friday morning—showed that consumer confidence had recently deteriorated and that business inventories had risen. The former means consumers are not in the mood to buy, and the latter that manufacturers had produced more than retailers could sell and, as a result, production would have to be cut back.

There is nothing in there about the cap on interest rates charged by these big banks. What they are saying is that the two economic indicators reported on Friday indicated consumer confidence is down, No. 1; and, No. 2, that business inventories were building, heralding a future cutback in production.

They go on to report:

Then, on Friday morning, the Commerce Department reported that inventories had risen sharply in September. Not only was it the first rise in 2 months, but the biggest since August of last year, a month after the recession started. Most important, much of the increase was among retail stores.

Mr. President, this article goes on to report other disappointing data.

The Nation's auto makers, for example, reported on Wednesday that car sales in early November had fallen to an annual rate of 5.7 million vehicles, from a rate of more than 6 million in most of September and October. Some auto manufacturers have already announced production cutbacks for the fourth quarter, which means layoffs or less overtime for many workers.

And Thursday, the Commerce Department reported that retail sales in general, apart from autos, had failed to grow in October, the third consecutive weak month.

This is a quote from the article, Mr. President:

As soon as I saw those inventory numbers, I right away talked to my sales force and said the probability of a slow recovery was disappearing and the risk was increasing of either no growth or a dip back into recession," said Edward Yardeni, chief economist at C.J. Lawrence, a Wall Street investment house.

It is not the fact that we are talking about a cap on credit car interest rates, Mr. President. It is underlying weakness in this economy and the big banks when they saw the stock market decline saw now they had a chance. They had a chance to divert people's attention in this country from the fact that they are charging outrageous rates of interest on credit cards, 7 of the 10 biggest issuers of credit cards in this country charging exactly the same rate, 19.8 percent. And they have the audacity to go to the country and say there is competition, let the marketplace work.

Mr. President, the evidence is the marketplace is not working. In fact, every major credit rate in this country is going down.

Let me have that chart. We can show this directly. This chart shows interest rates in the economy. It is a very instructive chart, Mr. President. This red line on the top at near 20 percent, that is credit cards. Do you see any change there? Right across from 1980 through 1991, they are charging their 19.8 percent. It does not matter what economic conditions are in this country.

It does not matter what other interest rates are in this country. They are going to get their pound of flesh.

Mr. President, the yellow line is the prime rate, and look at the difference. The prime rate has gone down dramatically. Over the same period of time that there has been no change in the interest that the credit card companies are charging, the prime rate has gone from almost the same rate the credit cards were getting down to 7½ percent, and still they keep the credit card rates at 19.8.

In addition, the discount rate was up to 13 percent in 1981 and it is now down to less than 5 percent, a dramatic decline. Just as we have seen a dramatic decline in mortgage rates of interest, we have seen a dramatic decline in the discount rate, in the prime rate but not in those credit card rates.

Oh, no, Mr. President. There has been absolutely no reaction to the marketplace. And there has been no reaction because they had not needed to react because those credit card holders are captives. Once they owe the credit card money they cannot move, and the result is these big bank holding companies that are the major issuers of credit cards are taking advantage of con-

sumers in this country. That is why the President said the credit card interest rates ought to come down. And when this Chamber moved to actually do something about it all the big banks seized on the opportunity in seeing this stock market go down sharply and tried to blame it on a cap on credit card rates.

Mr. President, that is not the case. The case is very, very clear. The stock market declined sharply on last Friday because we had a series of new economic indicators that tell us this economy is not recovering, and one of the reasons this economy is not recovering is because there is no plan for it to recover. The President has a plan for every country but we do not see him with a plan for our own. There is no plan for economic recovery in America.

Mr. President, I just think some of us have an obligation to set the record straight when we see people trying to seize on other news to make their own case. The fact is the banks are charging 19.8 percent for credit card interest when they are giving us when we make deposits 5 percent or less. That is a 400-percent markup, Mr. President, depending on how you calculate it, 300- or 400-percent markup.

And they have gone to the American public and they have said, oh, my God, if we stopped gouging you on interest in rates on credit cards the whole economy will collapse? Who believes that, Mr. President? Who believes that? I certainly do not. This economy is not built on gouging people on credit card interest rates. That is not how this economy was built. We did not see America become the foremost economy in this world because the big banks were gouging people on credit card interest rates. Who are they kidding?

I saw spokesmen for the banks talk over the weekend, and they were asserting that, lo and behold, if the Congress puts some kind of cap on interest rates half of all the credit cards will be taken from people. Does anybody believe that? Does anybody believe that? They are making huge profits on credit cards.

Let me say, Mr. President, I would prefer not to have the Government have to act. That is precisely what I said on the floor last week. The Government should not have to act. The banks should act. The banks should do what every other element of our economy has done when the interest rates have come down; they have brought their rates down. That is exactly what the big banks ought to do. If they want to forestall Government action, there is one simple step for them to take—bring down these outrageously high rates and do it just as every other part of our economy has done when market forces dictate it.

Mr. President, I just think we have an obligation to set the record straight. This stock market went down because this economy is weak and because we received new data on Friday that says precisely that.

Let us not let the big banks create a mood or a climate in which nobody can do anything and they are just allowed to go along charging excessively high rates of interest. The way out of this is for them to respond and lower these rates on their own. That would show good faith, Mr. President, and that would solve the problem.

I thank the Chair and yield the floor. And I thank especially my colleague from Washington, Senator ADAMS, for permitting me this interruption.

Mr. ADAMS. I thank Senator CONRAD for an excellent explanation and I support him in his comments.

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1991

The Senate continued with the consideration of the bill.

Mr. ADAMS. Mr. President, I ask that the amendment that I have presented be modified to be a sense-of-the-Senate resolution which we have sent to the desk and would ask the managers if we might have a vote in support of this. We have discussed the matter. I think we have settled it on a rational basis. I ask that this modification be presented, and I do not ask for the yeas and nays, but I ask that there be a voice vote on the matter.

The PRESIDING OFFICER. The Senator is informed the modification has not reached the desk.

Will the Senator send the modification to the desk?

AMENDMENT NO. 1353, AS MODIFIED

Mr. ADAMS. Mr. President, I will explain the modification while it is being sent to the desk. The modification is that there be a sense-of-the-Senate resolution, and I have discussed this matter with both the ranking member and with the chairman of the committee, and they have indicated support for the employees placed in the report and will press that this information be set forth as the indication of the Senate that the employees' plight is to be looked at particularly in the four regards, spelled out in my original amendment. I appreciate the managers on both the majority and minority side for agreeing to this.

Has the President now received the modification?

The PRESIDING OFFICER. The modification is at the desk.

The amendment (no. 1353), as modified, is as follows:

On page 395, after line 25, insert the following new section:

SEC. 308. CONSIDERATION OF DISPLACED WORK FORCE.

It is the sense of the Senate that in reviewing proposed mergers and acquisitions, the appropriate Federal regulator consider the impact on employees of the existing and proposed institutions, including whether the institutions plan to provide reasonable notice to employees well in advance of any layoffs, whether the institutions plan to make any effort to ensure that laid-off employees receive priority in filling future vacancies, whether the institutions will provide specific severance benefits for laid-off employees, and whether and for how long benefits such as health and life insurance and pensions will be continued for laid-off employees.

The PRESIDING OFFICER. Is there objection to the modification of the amendment?

Mr. RIEGLE. No.

Let me just say, Mr. President, if I may be recognized, I support the sense-of-the-Senate resolution as it has now been modified.

I thank the Senator from Washington for both raising the issue and being willing to work it out in this fashion. I think it is a tribute to him that he has not only focused the attention on this issue but has been willing to resolve it with me and the ranking minority member in acceptable fashion. I think it is a plus in the form it is now, and it is an important addition to the bill.

I thank the Senator for it and yield to my colleague from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. Mr. President, the modification is acceptable to the Senator from Utah, and I commend the Senator from Washington for his cooperation.

The PRESIDING OFFICER. Without objection, the amendment is modified.

Mr. RIEGLE. Mr. President, I ask that the question now be put to the Senate.

The PRESIDING OFFICER. There is time remaining.

Mr. RIEGLE. I yield back the remainder of my time.

Mr. ADAMS. I yield back the remainder of my time.

The PRESIDING OFFICER. Time is yielded back.

The question is on agreeing to the amendment, as modified of the Senator from Washington.

The amendment (No. 1353), as modified, was agreed to.

Mr. RIEGLE. Mr. President, I move to reconsider the vote.

Mr. ADAMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RIEGLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ADAMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RIEGLE. Mr. President, if I may be recognized again.

I thank the Senator from Washington.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. We have been making good progress this afternoon on these

amendments. We have an amendment now scheduled for a vote at 5:20. We are ready to proceed with a discussion on amendments that would be appropriate to title V, the consumer protection section. I understand that Senators who are interested in offering amendments to this section have been notified. It would be helpful to our being able to move through this bill and complete this bill to have those amendments offered at this time.

And so while we await those amendments or other amendments, I am going to suggest the absence of a quorum, and we will be prepared to proceed just as soon as a Senator arrives with an amendment to offer.

Mr. CONRAD. Will the Senator withhold?

Mr. RIEGLE. Yes.

Mr. CONRAD. I would like to ask unanimous consent to continue to review some other facts that are connected to this whole question of what caused the stock market to decline on Friday.

Mr. RIEGLE. If the Senator would yield, let me yield the floor, and let the Senator seek the floor. This is within the scope of the bill, and so he is entitled to seek time and speak on it and continue his remarks. Let me yield the floor for that purpose.

Mr. CONRAD. Mr. President, let me indicate to the floor manager that I would be glad to yield the floor when a Senator comes who is part of his schedule to try to move this bill so I do not delay the action on this bill in any way.

Mr. RIEGLE. I thank the Senator. That is very gracious.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I did not have time to fully explore all of the reasons that we saw the stock market decline sharply on Friday. I was able to refer to what happened with respect to new information coming out that this economy is weak, is in trouble, it is not experiencing the lift that some had predicted. I talked about consumer confidence and talked about those inventory numbers jumping.

Mr. President, on the question of consumer confidence, the New York Times article of today says:

> The consumer confidence numbers were also a big blow. The University of Michigan's Institute for Social Research, which polls Americans on job security and buying plans, sent advance word to those who subscribe to the monthly surveys that early-November polls had shown a sharp drop in the confidence index—to 70.7 from 78.3.
>
> The news spread quickly through Wall Street, confirming an earlier report from the Conference Board, a business organization. The Michigan Institute and the Conference Board produce the most widely followed consumer confidence surveys, and while the Conference Board had reported a sharp drop in its index for October, the Michigan survey had not shown a similarly sharp drop until the early-November numbers became public on Friday. The Michigan numbers ended lingering hopes that the Conference Board's gloomy October survey might have been a fluke.
>
> There was other bad news last week. Unemployment insurance claims rose to their highest level in months. The Federal Reserve Bank of Philadelphia's index of business activity in the region, an early measure of recent economic activity, produced its first negative reading since February. The oil rig count, a measure of exploration activity, fell to its lowest level in months. And American Airlines announced a multibillion-dollar cutback in capital spending for new planes—a decision that could hurt the Boeing Company's so-far-robust operations centered in the Seattle area.

Mr. President, what happened on Friday was the culmination of a week of bad news about this Nation's economy. Make no mistake about it. It was not the case that this body's action on a limit on credit card rates was the precipitating factor. In fact, the precipitating factors were those outlined in the New York Times piece of this morning—a drop in consumer confidence, a very sharp drop; rise in business inventories; a whole series of bad news from the automobile industry, from the airline industry, and from all of the other factors that I recited; unemployment insurance claims up, and up sharply.

And yet what the banks did was very clever. The big banks who want to protect these unseemly high levels of credit card interests seized on the drop of the stock market and tried to convince this Nation's news media and through the news media the American people that nothing could be done to challenge their interest rates on credit cards.

Mr. President, I hope that the news media would not be so easily stampeded, not be so easily fooled; that they would look at the larger factors that surround them and understand that we face the situation in which the stock market is right now selling at very high levels, historically. It is due for a correction. And we should not be surprised when, after a week of bad economic news, the stock market experiences a downturn.

Mr. President, there is much more evidence that could be presented. I am not going to take the time of the Senate to do that.

But let me just conclude with an article that was in the Saturday's Washington Post.

Quoting from a Mr. Brad Weekes, a senior vice president and equities trader at Donaldson, Lufkin & Jenrette:

> "We've had a huge run-up [in stock prices] over the last three months on speculation that the economy was turning around. Finally, it just kind of burst," said Brad Weekes, a senior vice president and equities trader here at Donaldson, Lufkin & Jenrette Inc. People realized "finally * * * that the economy just has not turned around at all," Weekes said.

That is the fundamental reason that we saw a sharp selloff in stocks on Friday.

Mr. President, we have to deal with facts when we deal with questions of legislative intent. The facts tell us that this economy is not recovering. This is one of the things that we could do that would in some small way help to get the big banks to adjust these outrageous levels of interest rates.

Mr. President, I yield the floor at this time to give my colleague from Michigan, the chairman of the Banking Committee, an opportunity to speak.

Again, I thank the Chair and yield the floor.

Mr. RIEGLE. I thank very much the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. RIEGLE. As we await the next amendment here on the floor, I am going to now make my own comments on the consumer title of the bill. There will be some amendments offered by Senator MURKOWSKI in one instance, and I think Senator COCHRAN in another, in that area of the bill.

I would like to now make my own statement on the consumer section and have that point of view in the RECORD. This will be title V in the bill.

I think the consumer section, title V, is the last area of the bill that will generate major discussion and controversy within the Senate. I think the other major titles that have done so have now been handled one by one. So let me now discuss the consumer section of the bill.

As an overview of the consumer protection provisions in the bill, let me say the protection of average depositors and American taxpayers was my chief concern throughout the drafting of this legislation, and I know it was for other members of the Banking Committee as well. This bill takes into account the needs of consumers of financial services and not just the needs of providers of these same services.

Ordinary citizens each day confer an enormous benefit on the banking industry by pledging the full faith and credit of the U.S. Government behind insured deposits taken in by those banking institutions. And, in return for that Federal deposit insurance guarantee and the fact that the taxpayers stand behind that guarantee, as we are learning with this legislation, the banking industry, for its part, has a responsibility to meet the needs of consumers and to treat average consumers fairly.

To ensure that the needs of everyday consumers are met, this bill contains significant consumer banking provisions. The bill incorporates the Truth in Savings Act and the Fair Lending Enforcement Act, both of which have previously been passed in the Senate by a voice vote.

Senator DODD of Connecticut authored the Truth in Savings Act, while

Senator DIXON from Illinois drafted the Fair Lending Enforcement Act. As those Senators may wish to speak on these provisions of the bill, I will discuss them only briefly.

Prior to 1980, consumers could compare different deposit accounts relatively easily because strict Federal regulation permitted very little variation in terms and conditions. In the 1980's, however, interest rate deregulation freed depository institutions to offer a broader range of rates and entirely new instruments with widely varying terms, conditions, and interest rates. I think consumers need better information and more useful information in order to make meaningful comparisons between competing deposit accounts and loans.

The Truth in Savings Act requires banks to disclose basic information on yields and fees, including the annual percentage rate yield on deposit accounts. This will, obviously, enable consumers to make informed comparisons between competing investment products or between different institutions offering these products.

The Truth in Savings Act also bans certain procedures for calculating interest that treat consumers unfairly, including the low-balance method and the investable balance method. By permitting interest to be based on the lowest balance in an account on any day during the accounting period, the low-balance method denies consumers a fair return. The investable balance method also allows depository institutions to pay interest on less than the full amount of principal savings in the account.

The committee was also concerned by disturbing evidence of continued discrimination against racial minorities and minority neighborhoods, generally in the area of home mortgage lending. Redlining continues to be a real problem in many of our Nation's cities. A Pulitzer Prize-winning series of articles in the Atlanta Journal and Constitution reported that middle-income white neighborhoods received five times as many loans from thrift institutions as did middle-income black neighborhoods.

The Federal Reserve recently released the results of the most comprehensive study ever undertaken of the problem of racial discrimination in lending. The results of that study are shocking.

White persons in the lowest income category were more likely to be approved for a loan than were black Americans and Hispanic Americans in the highest income categories. Minority home buyers were turned down for mortgages two to three times more often than white home buyers who had similar financial circumstances attaching to their individual situations.

The Fair Lending Enforcement Act addresses this issue by improving enforcement procedures in various ways. It requires Federal regulators to monitor more closely and to respond more forcefully to patterns of lending which suggest discrimination and to individual complaints of discrimination. The legislation enhances the ability of individuals to pursue their rights under fair lending laws by requiring lenders to make appraisal reports available to loan applicants. Discriminatory appraisals often cause lenders to deny mortgages to minority applicants. The bill is also designed to enable the Department of Justice and the Department of Housing and Urban Development [HUD] to play a greater role in enforcing fair lending laws.

BASIC BANKING/GOVERNMENT CHECK CASHING

Also, in drafting this bill, the committee was concerned that large numbers of Americans are today excluded from participating in the banking system. Surprising as it is, according to the General Accounting Office, nearly 1 in 5 American families—some 16.6 million American families in all—do not have any bank account.

Of those families, fully 42 percent of that group receive at least one regular check from a Federal, State, or local government.

The GAO has found that only 25 percent of families receiving Aid to Families with Dependent Children benefits have bank accounts in our country. I think we can expect this problem to grow, as several recent surveys have found that fees for retail banking services are in fact going higher. A June 1991 study by the Federal Reserve Board noted that "an overall trend toward higher fees for retail banking services" is "readily apparent."

Families suffer real hardships as a result of their exclusion from the banking system.

First, when they cannot have a banking relationship, they are often compelled to go to such entities as check-cashing outlets to cash their checks. Usually those businesses, which are often store fronts that you see in lower income neighborhoods, impose very stiff fees on those individuals to go in and cash a proper and valid Government check.

A 1987 survey of check-cashing outlets by the Consumer Federation of America found out that, on average, check-cashers charged over $8 to cash each $500 Government check.

Second, individuals and families without bank accounts must rely on cash to conduct their economic transactions. This reliance on cash places many citizens, a large number of whom are elderly, at a heightened risk of robbery and theft, and they are often preyed upon by street criminals because it is known they are carrying cash around to pay their bills and otherwise live.

To address this problem, S. 543, our bill here, requires banks and thrifts to offer a basic transaction service account. This legislation is based on a proposal originally made by Senator METZENBAUM. The provisions of the bill reflect a compromise that was negotiated between the Independent Bankers Association of America and the American Association of Retired Persons, and are supported by those organizations and others.

The bill in that area requires banks and thrifts to offer what is called a lifeline checking account and a Government checking-cashing service to low-income individuals. Individuals would be able to choose one account or the other, either the lifeline checking or the Government check-cashing service, but could not choose both. It would be one or the other.

There have been some misunderstandings about what this provision does and does not do. The bill, as it is written and presented to the Senate, contains a number of important improvements over previous versions of this idea. I want to clear up these misunderstandings so Senators can see that this is a very reasonable provision in this bill, and one that I think Members will want to support when they understand it.

The bill as such does not impose any financial burden on the banks for offering these accounts. The bankers are not asked to provide these services free of charge or out of the goodness of their hearts. Instead, the bill specifically allows them to make a profit for providing these services and that would be the cost of providing the service plus a 10-percent profit margin on top of those costs.

Banks may rely on cost studies that are conducted by the Federal Reserve Board in setting their fees. Consequently, the bill does not set banks off on a costly effort to try to do an internal costing exercise. In addition, banks need not pay interest on this basic lifeline transaction account, on the balance in that account.

The bill will not expose financial institutions to fraud as a result of cashing Government checks because no one will be able to walk in off the street, unknown to the bank, and demand that a bank cash a check for that person. We provide safeguards against that so that consumers who want to establish such an account with the bank must first go to the bank. They must apply for the service, and the banks can impose a 15-day waiting period before commencing the service to that individual.

Second, the banks may reject an applicant if that applicant has committed fraud, has made material misrepresentations, has a history of writing bad checks, or has a bad credit record.

And then, once an account is established, only the accountholder himself or herself may cash checks and only checks made out to him or her up to a

total of $1,500. Banks may issue I.D. cards to the persons with these special accounts and require the customer having that account to display the card before making a transaction. Moreover, State and local government checks would only be cashed if they were within that State or locality. So it would not be a case of those other jurisdictions of government checks there being necessary to be cashed in some other State and some other location. Additionally, a bank need not cash a check if it believes that the check is fraudulent, has been altered, or forged, if the I.D. card has been altered or forged, or if the person cashing the check has misrepresented his or her identity.

A bank may request the Federal Reserve Board to suspend the Government-check-cashing services requirement, but in order to do that, the Federal Reserve Board must determine that the institution is experiencing an unacceptable level of losses due to check-related fraud. So if it turns out to be a problem in a given institution, there is a resource for that institution to not have to continue that service. However, with these other safeguards, we do not suspect that will occur.

Moreover, the Federal Reserve Board may similarly suspend check-cashing requirements for any class of Government check if the Federal Reserve Board determines that the banks are experiencing unacceptable losses as a result of fraud involving that class of checks. A bank may take any of those costs attributable to fraud associated with providing this service into account when they actually price out the fee for this service. So we give the banks, in law, the right to build into their cost structure and their profit the amount of money needed to recoup any losses that are in the normal pattern and to earn a profit over and beyond that.

This is not an unreasonable request of the institutions. I know some institutions do not want to do it. Many do it already today. In fact, I would say the majority of institutions in the country today have instituted some kind of a lifeline account, although not many institutions offer one or the other, to meet the very needs of citizens throughout the country.

Yet, I think one of the problems here is that sometimes institutions do not particularly want some of the low-income people actually coming into the lobby of the institution to carry out their financial transactions. I hope we will not find that happening in this country, nor should we accept it if it is happening. I think banks, having the great assistance of Government-backed deposit insurance, ought to have the front door open to all classes of customers in our society. All persons should be welcome and all should be able to take advantage of basic banking services as long as they conduct themselves properly and are prepared to pay the fees associated with it like any other customer is expected to do.

The bill also includes antifraud protections with respect to lifeline checking accounts. Institutions may institute direct deposit unless the consumer objects. In that case, if the bank says to an elderly retiree, "Look, we would like to have your Social Security check deposited directly into your account here at the bank," that can be done unless the person on Social Security receiving the check objects. It would, in many cases, offer a convenience. So institutions can do so in the absence of an objection from the person with whom they are dealing.

An institution may also close a basic transaction account if the account has experienced three or more overdrafts or returned checks in any 6-month period or if there has been any fraudulent activity associated with the account.

Perhaps most important, in terms of unjustified concerns of Members, this bill in this area does not impose a significant regulatory burden on banks. We were very careful to take that issue into account in drafting this provision. In fact, banks will self-certify their compliance with these provisions. The regulators may not—I underline may not—issue regulations, conduct examinations or assess fines or penalties. Compliance will be enforced only by procedures available under existing statutes. The bill specifically states that failure to comply does not create a private right of action against the institution. So we are not moving in this area to try to create some new and large regulatory burden on financial institutions. To the contrary, we make it very explicit that we expect banks to operate in good faith and to self-certify their compliance with the provisions without a horde of regulators looking over their shoulder.

This bill recognizes that many institutions already provide lifeline checking and Government check-cashing services, as I have mentioned. The bill states that those institutions that now offer those kinds of accounts need not change their present service offerings. On the contrary, any institution that offers such services that are comparable to or are more favorable than the services specified in our bill is then exempt from the requirements of this bill.

Mr. President, as I have noted earlier, this legislation is supported by the community bankers and by the American Association of Retired Persons [AARP]. I would like to read from a letter that those organizations addressed to each Senator, and I quote from it as follows:

> Please support the compromise basic banking/government check-cashing language approved by the Senate Banking, Housing, and Urban Affairs Committee in August that is included in this bill. In addition, please oppose amendments which may be offered to weaken or eliminate this language.

Then jumping ahead but continuing the quote:

> The proposal accommodates consumer concerns without imposing undue hardships upon the banking industry.

It goes on to say:

> It is carefully crafted to protect banks against fraud.

It continues:

> It is a fair and balanced measure that both bankers and consumers can easily live with. Passage of this provision is proconsumer and would help build a stronger financial system.

This is from the AARP and the independent bankers in combination.

Mr. President, as the community bankers recognize in supporting this compromise legislation, these provisions strike a very reasonable balance between making banking services available to all of our people in America and, at the same time, protecting our banking institutions from fraud or from excessive regulation. Extending the reach of the banking system, as we suggest here, will be good for families, good for communities, and good for the banking system. So I urge my colleagues to support the provisions of the bill in this area and vote against any amendment to strike all or part of title V that contains these provisions.

Just one other thought, unless there is another Senator waiting to speak and that is this: As this description of this section illustrates, the committee has tried in every area of this bill to be reasonable and to apply a test of common sense to what we have proposed, in terms of what the section of the bill is designed to accomplish, taking into account the costs involved, taking into account the regulatory burden involved, taking into account the fairness of how the system works. We have tried to apply that test in each section of the bill, and we have done so in title V. These are reasonable provisions. These will help citizens in our country who today have a very difficult time connecting to our banking system. It will help them be able to do that. That will be good for them and good for our country and good for the banking system. I yield the floor at this point.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. SIMON. Mr. President, I simply want to underscore what the chairman of the committee has said. I think the committee has worked out a very practical compromise. This particular provision contains basically things that we have voted on favorably in this body on several occasions.

Truth-in-savings provisions passed the full Senate several times during the past decade; a fair lending provision which increases the tools available to help detect and deter illegal lending discrimination and redlining practices by banks passed at least twice.

I could go to the others. What is different is what is called basic banking services. Here, as has just been pointed out by Senator RIEGLE, the American Association of Retired Persons and the Independent Bankers Association of America have had a joint ad in USA Today.

Among other things, it says:

AARP and IBAA urge the Senate Banking Committee to support this compromise basic banking and government check-cashing proposal.

I ask unanimous consent to insert this article in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From USA Today, July 31, 1991]

FINANCIAL SERVICES REFORMS THAT WE CAN ALL BANK ON

This morning, the banking committee of the United States Senate will vote on Senate bill 543. It contains some of the most sweeping financial reforms since the Great Depression.

Two issues are so vital to Main Street America that the American Association of Retired Persons (AARP), representing older consumers, and the Independent Bankers Association of America (IBAA), representing the nation's community banks, have joined forces. Together, we urge the Senate Banking Committee to:

MAINTAIN EXISTING LEVELS OF DEPOSIT INSURANCE

Many consumers, particularly older Americans, have quite literally banked on current levels of deposit insurance. Changing the rules now would be devastating.

Recognizing this fact, Senator Donald Riegle, Chairman of the Senate Banking Committee, has chosen to protect existing deposit coverage insurance. The House Banking Committee also recently voted against reducing deposit insurance levels. AARP and IBAA urge the Senate Banking Committee to oppose any amendments reducing levels of deposit insurance.

ASSURE ACCESS TO ESSENTIAL BANKING SERVICES

Many Americans find it increasingly difficult to gain access to affordable banking services. For this reason, Senator Riegle has proposed compromise language requiring financial institutions to offer affordable basic banking accounts and to cash government checks. This provision assures low-income consumers access to necessary banking services in a fashion that the nation's banks can easily live with. AARP and IBAA urge the Senate Banking Committee to support this compromise basic banking and government check-cashing proposal.

IT'S SOMETHING WE CAN ALL BANK ON

Knowing that our deposits are insured. Knowing that we won't be denied access to necessary banking services. These are provisions we can all bank on.

Mr. SIMON. Then the consumers Union, which speaks as effectively for consumers in this country as any organization, has a detailed factsheet. I ask unanimous consent to insert that in the RECORD.

There being no objection, the factsheet was ordered to be printed in the RECORD, as follows:

FACTSHEET ON BASIC BANKING/GOVERNMENT CHECK CASHING PROVISIONS IN THE SENATE BANK DEREGULATION BILL

WHAT DO THE BASIC BANKING/GOVERNMENT CHECK CASHING PROVISIONS REQUIRE?

These provisions require federally insured banks and S&Ls to provide two desperately needed services for households with incomes of $20,000 per year or less.

Basic Banking Services: First, federally insured institutions must provide "basic" transaction accounts so that families can safely store their funds and write checks to safely pay their monthly expenses. Banks can charge accountholders for these services under a simple formula that allows them to recoup their costs plus a 10 percent profit.

The basic banking account is designed to serve the most basic banking needs of lower income consumers:

Only 10 checks (or other withdrawals) can be written against the account each month.

The accountholder cannot have or open another account at the same or another institution.

The average monthly balance in the account cannot exceed $750.

The account does not earn interest.

Government Check Cashing Services: Second, federally insured institutions must cash government checks for nonaccountholders, including government benefit checks issued under the SSI, AFDC and general assistance programs. Institutions can also charge for this service under a simple formula that allows them to recoup their costs plus a 10 percent profit.

WILL THESE SERVICES IMPOSE A COST BURDEN ON BANKS?

These provisions will NOT impose a cost burden on banks because the bill specifically allows banks to charge for both services. The charge can be in an amount that is adequate to allow a bank to recover not only its costs (including any fraud-related losses) but a 10 percent profit.

WILL THESE REQUIREMENTS MAKE BANKS LESS PROFITABLE BY EXPOSING THEM TO FRAUD LOSSES?

No. Consumers that want the services will have to register with the bank by filling out an application form and presenting appropriate identification. Banks have 15 days from the date the application is filed to perform whatever background checks may be necessary.

With their basic banking accountholders, as with all their account customers, banks already have extremely efficient systems in place to reject checks drawn against accounts with insufficient funds.

With their check cashing customers, banks can require identification, including a bank-issued identification card, before cashing any check. Further, banks are only required to cash checks that are issued to the person who has registered with the bank for the check cashing service. Banks are not required to cash government checks written to third parties.

These protections, and others, should minimize any fraud-related losses for banks. Banks can recoup whatever, losses may occur, however, through the fees they charge their basic banking and check cashing customers. Under the bill, fraud-related losses are considered costs that may be fully recovered by banks in their pricing structure.

WILL THESE SERVICES IMPOSE A REGULATORY BURDEN ON BANKS?

A minimum burden, at most. In this area, as in many others, the Banking Committee has already bent over backward to address industry concerns. Banks will essentially police their own compliance with the basic banking/government check cashing provisions. Indeed, banks that already offer "comparable" accounts are exempt from the provisions altogether.

The bill gives no federal agency the authority to issue regulations. Further, it expressly prohibits any regulatory agency from imposing civil fines for non-compliance. Similarly, banks are exempt from civil liability for non-compliance in any private lawsuit.

WHY ARE THESE PROVISIONS NECESSARY?

These provisions are a vital component of any bank reform legislation to ensure that lower income households have a safe place to store their funds until needed to pay their basic living expenses. They are also necessary to ensure that lower income households do not face excessive costs in paying their regular expenses and converting a check into cash. If these families can avoid these excessive costs, they will have more funds available to put food on their table and clothes on their backs.

Currently, 16.6 million households do not have a bank account. Of this 16.6 million, 82 percent have annual incomes of less than $20,000. According to the GAO, 78 percent of AFDC recipients do not have a bank account.

Many "unbanked" households would like a bank account, but simply cannot afford one. While middle and upper income households can maintain the high balances necessary to avoid the high fees banks now charge for routine services, lower income households cannot. Consumers typically must keep about $500 and up to $1,000 or more on deposit to avoid these monthly service fees. Overdraft charges now average about $14, and can run as high as $25.

Numerous surveys by consumer groups indicate that most banks will not cash government checks for nonaccountholders. Consequently, lower income households are forced to cash their checks at check cashing outlets, where they can be charged between 1 and 10 percent of the face value of the check.

CONSUMERS MUST BE ABLE TO CHOOSE BETWEEN A BASIC BANKING ACCOUNT AND CHECK CASHING SERVICES ACCORDING TO THEIR INDIVIDUAL NEEDS—BANKS SHOULD OFFER BOTH

The Senate Banking Committee considered an amendment to allow institutions the choice of offering either basic banking accounts or check cashing services. Institutions would not be required to offer both.

In rejecting the amendment (8–13), the Committee preserved the right of each eligible consumer to choose the service best suited for his or her needs. All banks are required to offer both services. The consumer can choose one of the two services offered—but not both.

At the Committee level, banks argued that their unsuccessful amendment was necessary to minimize their costs in complying with the basic banking/government check cashing provisions. This is a spurious argument, however. The bill allows banks to impose charges for both services, and these charges allow banks to fully recoup their costs, and even earn a 10 percent profit. Consequently, this amendment will not save any costs that would not otherwise be fully recoverable through allowable service fees.

Mr. SIMON. Finally, Mr. President, we are not talking about something that, first of all, will require that the banks lose money. This provision says

they can charge for check cashing and cover their costs and have a 10-percent profit.

Since we are asking the taxpayers of America to come along with $70 billion in a loan to the banks, it does not seem it is asking too much to say to the banks, how about helping people of very limited means, who do not have bank accounts, by covering them so they can cash their checks and you can cover your costs and have a 10 percent profit on it in addition.

For those who say well, we are going to have all kinds of fraud, Rhode Island has had such a law requiring this of the banks since 1986. Connecticut has had it since 1987. In both States they have not had a big problem.

I think the proposal by the committee in this regard is a sound proposal. I hope the amendment to knock this provision out of the bill will be defeated. It should be defeated. We ought to be protecting Americans who too often are subject to all kinds of whims. The reality is those of us who have bank accounts, those of us who can afford all kinds of things, we can get checks cashed for nothing. What about people who do not have bank accounts? What about people on welfare? We have to be looking out for them, too.

Mr. President, if no one wishes the floor, I question the presence of a quorum.

The PRESIDING OFFICER (Mr. WIRTH). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CREDIT CARD CHARGES

Mr. D'AMATO. Mr. President, ever since I introduced my legislation dealing with extraordinary charges that are being levied on people, on consumers, and on the middle class by the credit card interests, we have seen an incredible litany of charges being levied at the legislation.

As a matter of fact, whether it be the Treasury Secretary or other Cabinet members, we are told that this legislation is anticompetitive. Let me read an excerpt from the November 15 letter from Alan Greenspan to Congressman WYLIE, ranking minority member of the Committee on Banking and Finance:

Considerable information about the various credit card plans is already available to consumers enabling them to select cards with the most attractive features including low rates. In general the board believes that the functioning of the U.S. economy is served best when credit is allocated through competitive market practices rather than being subjected to artificial constraints. Sincerely, Alan Greenspan.

Mr. President, let me show you what 7 our of 10 of the largest issues of bank credit cards charge—19.8 percent. I want to ask you. Do we really think that came about because of free competition? Did that really come about because of the marketplace, and because people are competing for their business? Citicorp, Manufacturers Hanover, and Chase, three out of four of the biggest money center banks in New York, just so happened to come up with 19.8?

I want to know what has happened to distort the free market system, and how it is that the regulators have not gone after what obviously is a collusive practice to deny working middle-class families a free market system, and an opportunity to have that market work—so that when the prime interest rate came down, so that when the discount rate came down, so that when the cost of money came down, they could share in that during these recessionary periods of time.

Do not kill the messenger who brings the bad news and who says you have collusion, that you have interest rates that are absolutely stiffling this economy during this recessionary period of time. This is nothing more than a hidden bailout.

You know who is doing the bailing? The middle-class worker—they are bailing out the money center banks for their bad foreign loans; for their bad loans in real estate.

Then people say that my legislation is trying to control credit? I want to tell you something. If you did not have 19.8 over there, we would not have to be trying to batter down what is a dam, an artifical dam keeping credit at those levels.

Mr. President, I have no illusions. I understand what the big boys are doing. I understand the incredible power. I understand how they have got to the credit corporations and others, and I understand how my colleagues are being besieged.

Oh, we are going to have a study in the House of Representatives. Now they are talking about an 18-month study. They are not even putting a fig leaf over them. They are putting themselves into the woods to hide—18 months to figure out what is going on here? One percent; that is a net profit of a billion-and-a-half dollars when you find out about the unexpended balances that are outstanding there. That is on top of the incredible rates. When you first give them their money back, you give them a profit, and there they are at 20 percent.

The PRESIDING OFFICER (Mr. WIRTH). The chair reminds the Senator from New York that under the previous order the vote now occurs on the Kohl amendment.

Mr. D'AMATO. Mr. President, I ask unanimous consent that I might be able to proceed——

Mr. GARN. Mr. President, reserving the right to object, the Senator has spoken on this at least on one other occasion today, and he certainly has the right to speak later in the day. But the entire Senate has relied on this unanimous-consent agreement to vote at 5:20. I object.

The PRESIDING OFFICER. Objection is heard.

Under the previous order, the vote now occurs on the Kohl amendment, No. 1351.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Louisiana [Mr. BREAUX], the Senator from California [Mr. CRANSTON], the Senator from Iowa [Mr. HARKIN], the Senator from Nebraska [Mr. KERREY], and the Senator from Maryland [Ms. MIKULSKI] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Vermont [Mr. JEFFORDS] and the Senator from Wyoming [Mr. WALLOP], are necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. WALLOP] would vote "Yea."

The PRESIDING OFFICER (Mr. KOHL). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 91, nays 0, as follows:

[Rollcall Vote No. 255 Leg.]

YEAS—91

Adams	Garn	Murkowski
Akaka	Glenn	Nickles
Baucus	Gore	Nunn
Biden	Gorton	Packwood
Bingaman	Graham	Pell
Bond	Gramm	Pressler
Boren	Grassley	Pryor
Brown	Hatch	Reid
Bryan	Hatfield	Riegle
Bumpers	Heflin	Robb
Burdick	Helms	Rockefeller
Burns	Hollings	Roth
Byrd	Inouye	Rudman
Chafee	Johnston	Sanford
Coats	Kassebaum	Sarbanes
Cochran	Kasten	Sasser
Cohen	Kennedy	Seymour
Conrad	Kerry	Shelby
Craig	Kohl	Simon
D'Amato	Lautenberg	Simpson
Danforth	Leahy	Smith
Daschle	Levin	Specter
DeConcini	Lieberman	Stevens
Dixon	Lott	Symms
Dodd	Lugar	Thurmond
Dole	Mack	Warner
Domenici	McCain	Wellstone
Durenberger	McConnell	Wirth
Exon	Metzenbaum	Wofford
Ford	Mitchell	
Fowler	Moynihan	

NAYS—0

NOT VOTING—9

Bentsen	Cranston	Kerrey
Bradley	Harkin	Mikulski
Breaux	Jeffords	Wallop

So the amendment (No. 1351) was agreed to.

Mr. RIEGLE. Mr. President. The next item that had been discussed earlier today and might come to a vote at this time was the Dixon amendment. The Senator from Illinois is on the floor.

I would appreciate it if we could have some order in the Senate.

The PRESIDING OFFICER. (Mr. KOHL). There will be order in the Senate.

Mr. DIXON. Mr. President, may I say while there are so many colleagues on the floor, we have debated my amendment on restructuring the RTC, as you know, for quite a period of time this afternoon that would provide for Senate confirmation of the CEO for the RTC, Al Casey, who, I personally think, is a good man and I would support. And it would provide for one Board with the CEO to be a strong Chairman, the Secretary of the Treasury, the Chairperson of FDIC, and two public members.

Now, my distinguished friend, the manager on the other side, the ranking member——

Mr. RIEGLE. May we have order in the Senate?

The PRESIDING OFFICER. Order in the Senate.

There will be order in the Senate.

Mr. DIXON. Mr. President, my good friend, the ranking member, the distinguished Senator from Utah, has come to me with the chairman of the committee, my good friend, the manager on our side, and suggested that there be some opportunity for talk. We have not yet resolved what might be done, but I am advised that the administration is open to some conservations about how we might resolve this.

As the Chair knows, I have not yet asked for the yeas and nays. I have indicated to the managers that I am willing to exercise the opportunity for talks with the administration and maybe put off until tomorrow the ultimate question of when we would go to a vote on this amendment, which is supported, I think, very heavily on this side, may I say. I cannot represent that it is unanimously supported, but there is substantial support on our side for demanding a reconfiguration of the RTC and a strong Chairman if we are going to pass legislation funding the RTC.

But I am willing to carry on some discussions for a while and would be at the beck and call of the two managers about what we might ultimately resolve, with the understanding, if I may say so, that I do want a vote on this if we cannot resolve between us and the administration what should be done about this RTC Board.

Mr. RIEGLE. Mr. President, I thank the Senator for his comments. I think we need full discussions. With the indication from the Treasury Department that they are open to discussion on this issue, that those discussions ought to commence tonight.

It would be my idea to ask unanimous consent that the amendment of Senator DIXON debated earlier today that was scheduled for a possible vote at this time be carried over until sometime tomorrow, with the decision left open by the Senator from Illinois as to whether he presses forward at that time for the vote or not.

The PRESIDING OFFICER. The Senator from Virginia.

COMMENDING THE NEW BILL CLERK

Mr. WARNER. Mr. President, a parliamentary inquiry.

I take note that the last rollcall vote was conducted by Miss Kathie Alvarez, who has recently been appointed the bill clerk.

My inquiry is: When in history has a woman taken a Senate rollcall vote?

My inquiry shows, not before.

So I think we should take due note of that and extend our congratulations from the body as a whole to the new bill clerk. We are making progress.

SEVERAL SENATORS. Hear, hear.

Mr. RIEGLE. Is there objection?

The PRESIDING OFFICER. Is there objection to the request of the Senator from Michigan?

Without objection, the request is granted.

Mr. DECONCINI. Mr. President, I will take only a moment or two.

The PRESIDING OFFICER. The Senate is not in order.

Will the Senate be in order?

Mr. DECONCINI. Mr. President, last week the Senate sent a wake-up call to the credit card companies of America. We sent a message that said we are mad as hell and we are not going to take it anymore. I hope the credit card companies of this country got that message.

Interest rates are down. Long-term rates, short-term rates, bank rates, prime rates, any rate that anybody can think of is down today except one, and that is the credit card rates. The discount rate that the Federal Reserve charges banks is about 4.5 percent today. The prime rate which banks charge their most worthy customers is about 7.5 percent, or 8 at the best. Thirty-year fixed mortgage rates can be found at 8.5 or 9 percent.

But what about credit card rates? Credit card rates are sky-high. They have not budged at all. You would think we were in a period of high-interest rates instead of low-interest rates in this country—it is the lowest that we have had that I can remember.

Certificate of deposit rates that institutions pay for deposits are also way down, in the measly 5- or 4.5-percent range today. At 5 percent you are practically losing money when you put your money into a savings account, based on inflation. Yet credit card rates are sky-high. They have not fallen, to my knowledge, at all over the past couple of years.

Seven out of the top ten credit card issuers charged the identical interest rate of 19.8 percent. I say that is incredible. It is not just incredible, all of these companies just happen to pick 19.8 percent. To me there is more to it and I think that it smacks of collusion.

Why has somebody not investigated this bizarre coincidence? Where is the Justice Department antitrust division? Why are they not doing something about this? Where is the Federal Trade Commission or the Federal Deposit Insurance Corporation or anybody else? The Treasury Department?

The Senate did not act precipitously last week when we adopted the amendment of the Senator from New York overwhelmingly. We sent out a signal here, loud and clear, that we have had enough. We sent a wake-up call, I hope, at least to the credit card companies of this country, that it is about time they get a message and they lower these.

Yes, we ought to believe in the market principle. We all subscribe to that. But there comes a time when greed takes over and that is when the market principle gets out of hand.

It seems to me that the time has come. I hope this body does not budge from the amendment of the Senator from New York. It was a wise amendment and we ought to do everything we can to implement it so the credit card consumer will, indeed, have a fair rate and the approach used by the Senator from New York was not unfair at all.

The PRESIDING OFFICER. The Chair recognizes the Senator from New York.

Mr. D'AMATO. Mr. President, first of all let me thank my colleague from Arizona, Senator DECONCINI, for focusing on the credit card interest rate abuse. I suggest to this distinguished body that if I had offered this interest-rate legislation in a truly free marketplace—it would be inappropriate. It would also be wrong. There would be no justification for this legislation because there would be no need for it.

I recently read a disturbing letter—I wonder if my distinguished colleague and friend from Arizona saw today's letter from Alan Greenspan. In this letter, Chairman Greenspan states that the best method of setting credit card interest rates is through competitive market processes. I ask you whether or not Chairman Greenspan actually believes there has been a competitive market process. It is the competitive market process that has caused a 19.8-percent interest rate to prevail at 7 out of the largest 10 credit card holders?

Mr. DECONCINI. If the Senator will yield, I have not read that letter but obviously the answer to that question is there is no competition here or the interest rates would come down.

I am not saying, and my colleague did not say in his legislation, that it had to be 8 percent or it had to be anything. They just had to be reduced 4 percent above what the IRS charges delinquent taxpayers, as I recall in the Senator's amendment.

Mr. D'AMATO. That is correct.

Mr. DECONCINI. That is not unreasonable. It is about time we do something in this body so that the consumer—many Americans live on these credit cards—does not have to

pay 19 or almost 20 percent. I thank the Senator from New York.

Mr. D'AMATO. Mr. President, I wonder why it is, given our concern about regenerating the economy during this recession period, and that even the President of the United States has called for the reduction of interest, why is Mr. Greenspan opposed to this legislation? The distinguished head of the Federal Reserve, who has served the public for so many years, has not examined why 7 out of 10 banks charge the exact, identical interest rates to their credit card customers. Three out of four of these banks are in New York. Manufacturers Hanover, Chase, and Citicorp all in that same metropolitan area, all charging 19.8. Is that truly just a coincidence? Is that truly a result of free market competition? Is it truly a competitive business?

Let me suggest that the Fed and Treasury have been asleep at the switch. The Fed and Treasury share a hidden agenda. That hidden agenda is a not so cleverly concealed bailout of the big money center banks by the middle class. If that bailout was terminated, some of those institutions might be in trouble.

As long as the middle class continue the bailout without protest, and no one points any fingers—Fed and Treasury are happy to go along with it.

By the way CNBC—which happens to be owned by General Electric, completed financial analysis designed to blame the 120-point decline in the stock market on Friday on the Senate's vote on the credit card legislation. If that is a financial analysis worth its salt—I could not believe it. The 120-point stock collapse came because of the infamous legislation?

By the way, why did I introduce this legislation? The devil made me do it. The devil is the 19.8 interest rate being charged by 7 out of the 10 largest banks.

At least Jesse James sometimes wore a mask. The bankers want to hold you up, take all your money and they have you thank them for their trouble. The bankers want you to plead for money, "Oh, please, please, do not cut me off."

I had a buddy some years ago. His dog, Barney, got a credit card. My two sons—no job, nothing—regularly get credit cards in the mail. I cut them up before my sons even see the credit cards. My sons cost me enough without the added expense of their having a credit card. We are supposed to thank these bandits?

If I was to thank them, I would have to say something like "Thank you Citicorp." "We are bailing you out for loans that you made." Thank you for making loans to every petty dictator and tyrant. Thank you for the billions and billions of dollars you loaned to foreign countries. Finally, thank you for loaning the billions of dollars' worth of loans you made to the real estate industry.

Mr. DECONCINI. Will the Senator yield for a question?

Mr. D'AMATO. Certainly.

Mr. DECONCINI. I would like the Senator's reaction about this.

Mr. DOLE. Do you feel strongly about this?

Mr. DECONCINI. It is absolutely unfair, portraying the Senator as "whacky," which was used, because I do not think that is appropriate coming from anybody, particularly the Secretary of the Treasury. I saw him on Sunday and I thought it was, not only totally wrong, but inappropriate.

I think the Senator not only—let me, if the Senator would just——

Mr. D'AMATO. I reject that analysis.

Mr. DECONCINI. Not only, do I not think the Senator is whacky, I think this credit card scam is whacky and it affects anybody in this country who has a credit card, whether you are the jobless graduate from college who gets a credit card who has no capability of paying it, or you are the working middle American who makes $20,000, $30,000, $40,000 and you have to pay 20-percent interest.

I would just like the Senator's response to that question.

And, also the fact that this has caused the stock market to lose 120 points last Friday. Talk about something that is whacky—I tell you, somebody has to spell that word, I guess.

Mr. D'AMATO. Mr. President, if I might respond, I was disappointed in the Secretary's obvious lack of knowledge regarding the reasons for Friday's precipitous drop in the stock market. I would have thought someone with his years of experience would have been able to analyze what actually occurred and not just facetiously attribute it to the decline in the bank stocks. There was some loss occasioned as a result of a weakening of bank stocks—but that accounted for a tiny portion of the reason for the market decline.

To simply ignore that Aetna, Boeing, IBM, Bethlehem Steel, Merck also had precipitous drops—Aetna because it charged off $1.3 billion; in loan loss reserves is to just ignore the reality of the marketplace. After Secretary Brady's years of experience with the marketplace, he should have recognized that at 3 o'clock when the options were exercised—what we call double witching hour, that it caused the market to drop about 80 points; to ignore the pharmaceutical houses that had the price of their stocks drop—whose earnings were overinflated, many, many, many times. The prices of these companies' stock dropped as much as 38 percent. Either the Secretary deliberately chose to ignore these explanations or he was terribly misinformed.

Mr. CONRAD. Will the Senator yield?

Mr. D'AMATO. For a question, certainly.

I wanted to make, if I might, two other observations on this issue. My mama has accused me of being wacky at times. I become upset when I see the middle class being taken advantage of because of the hidden bailout I mentioned earlier.

I make no apology for putting a spotlight on this absurdity. It is unconscionable, that we do not have free market competition. This legislation should not be necessary. If there was free competition, we would not have supported this legislation. I look and see Senator CONRAD from North Dakota, he is a free marketeer if there ever was one. It is because of the long-term abuse of the marketplace that we came forth with this legislation.

I did take unkindly to some of the observations that were absolutely out of line in attempting to attribute a 120-point decline to this legislation. It was unfair and it certainly did not square up with the facts.

An old law school professor said to me when you have the facts, you pound at the facts. When you have the law, you pound at the law. When you have neither, you just pound. And that is what the Secretary of the Treasury did. He did not in any way attempt to distinguish and demonstrate concrete reasons for Friday's market volatility.

Let me tell you something, when Secretary Brady says we are not in the recession, I have to wonder if he really understands what is taking place in many working middle-class families. When the Secretary does not understand that this is far from an elitist measure we have offered, and that it is a measure to relieve middle-class people during these extraordinarily difficult times, then I do not think he understands what is taking place.

This legislation is not an offer to help the wealthy. The wealthy do not have to worry, they pay their credit cards after 30 days. It is for the working middle class, it is for the guy who has the automobile repair bill that comes in at a thousand dollars. It is for the guy who has a furnace blow up in his house during the winter months who has to get it repaired at a cost of $500 or $600. Those are the people who are paying 20 percent on the credit card debt. Why do you think the banks are screaming and yelling about this legislation? It is because this is a huge profit source. For many of these banks, it is the only area where they are making money. We do not deny them a fair return, but this is more than a fair return.

Mr. President, there is a small article, editorial in Business Week, November's Business Week. I am going to read part of it. It says:

> The Fed and the White House are trying to get interest rates down, in order to coax the cautious consumer back into a buying mood. But if that consumer charges purchases to a credit card, the interest rate is apt to be a stunning 19.5%—enough to put a damper on any buyer's zeal.
>
> The credit card rate has been flirting with 20% in spite of a dramatic decline in what

banks have to pay for money. Since mid-1990—

Mr. President, the discount rate has gone from 7 percent for the banks in this last year down to 4.5 percent—

the federal funds rate has been cut 13 times and now stands at just 4.75%.

Why have things reached this ugly pass? The answer is that Washington, still stunned by the savings and loan debacle, is treating the banking system with kid gloves. Banks cite the cards' unsecured-credit aspect as justification for such high-rates—yet they're snowing mailboxes with new account solicitations.

The truth is that the wide spread between what banks pay for money and what they charge consumers for it is a subsidy to an industry that is rightly seen as shaky. It's also true that, despite lip service to lower rates, Washington has tolerated and even encouraged banks to soak the consumer—to prop up the industry.

Let me conclude and say "and for their part, regulators and politicians should stop subsidizing banks by allowing outrageous rates on consumer loans. It is time to end this charade."

Mr. President, there is an old saying—do not shoot the messenger for bringing bad news. I undertook this job to correct the lack of a truly competitive market for credit card interest rates. It is a responsibility that I have. Sometimes you are going to rock the boat and make some people angry at you because they do not like the bad news, whether they are people in your party or the administration, or whether they are constituents and very powerful groups. It is incumbent upon us, as legislators, to stand up, and not to put a fig leaf on and say, let us have an 18-month study. A study would be a betrayal to the working middle class—it would ignore what is taking place. The working middle class is providing a subsidy to the banking industry—and not even getting credit for it. It is a subsidy that we are giving to the banks on the back of the middle-class worker who pays 19.8 percent. That is what we are involved in, and it is wrong.

I know the Senator has a question.

(Mr. ROBB assumed the chair.)

Mr. CONRAD. Will the Senator yield? Is the Senator familiar with the difference between what the prime rate has been and the credit card interest over the last 10 years? Because I asked my staff to look into that question, to find out if in any way we are being unreasonable in our proposal. I found an interesting thing, the Senator from New York would be interested in.

Mr. D'AMATO. I would be interested in it.

Mr. CONRAD. In the early eighties, the gap between the prime rate and credit card rate was about 2 points, sometimes 3 points. Today, the gap between the credit card rate and the prime rate is 11.4 percent. Under our proposal, the gap would have been 6.5 percent, still much higher in terms of what the credit card companies could get in relationship to the prime rate than what they were getting in early 1980. Right now they are getting a gap of 11.4 percent. It is unprecedented.

Mr. D'AMATO. That is over the prime rate.

Mr. CONRAD. Over the prime rate.

Mr. D'AMATO. And the prime rate is a rate that gives them a profit, is that not correct, in loans made to their best customer?

Mr. CONRAD. Since they are borrowing at 4.5 percent, the prime rate of 7 percent must give them a profit or they would not do it. I think the Senator is correct in his assumption.

You really have to wonder precisely what it is that the people are complaining about. I know what my constituents are complaining about, and I assume it is the same for the Senator from New York. They are upset because when they hear the big banks get on television and say, well, we have to have 19.8 percent because we have so many bad loans out there, again, they are saying to the middle class, you fill in the difference. We are asking the middle class to come out and bail us out. The middle class is tired of bailing everybody out.

Mr. D'AMATO. And their poor loaning practices.

Mr. CONRAD. I watched the bank representatives talk this weekend and the crocodile tears we heard from the big banks that they have to have 19.8-percent interest or they cannot possibly make it. I tell you, when my constituency sees that they are getting 5 percent on the money they give the banks, they turn around and put it out for 19.8 percent and they say they cannot make it, something is radically wrong.

Mr. D'AMATO. Was the Senator aware of the fact that in addition to whatever the interest rate they are paying, 19.8 for the largest 7 out of 10 banks paid by the consumer, that the bank also has a service fee of anywhere from 3 to 5 percent that they receive from the retailer. When that customer goes to an institution, whether it is to buy a tire for an automobile, whether it is a restaurant, whether it is to buy an appliance, the store ultimately pays anywhere from 3 to 5 percent to the bank. The 3 to 5 percent is an additional charge over and above the 19.8 percent. In some cases, we are talking about a total rate, when combined with the retailer payment and the interest rates the customer is charged, close to 25 percent.

Mr. CONRAD. Absolutely, extraordinary. I talked to some retailers today who were explaining that to me.

One other point I thought I should make with my friend, the Senator from New York, and that is when they talk about the drop in the stock market being caused by a cap on credit card rates, I think we should remind people that the stock market is at a very high level historically. The price-earnings ratio is 29, historically it averages 15. And on Friday, the very day we saw the stock market drop, in the morning two important indicators were announced that tell us this economy is not recovering. No. 1, consumer confidence numbers were released that showed a dramatic drop in consumer confidence in the early days of November.

Second, the inventory levels in this country were also released Friday morning showing a dramatic increase. That tells us production is going to have to be cut back.

Third, the same week, unemployment benefits showed claims going up dramatically.

And there was lots of other bad news as well. American Airlines canceled a multibillion-dollar contract. The Soviets announced they were not selling any more oil. Biotechnology, as the Senator from New York indicated, led the decline. What do biotechnology stocks have to do with credit card interest rates? Absolutely nothing. The fact is the banks in an attempt to divert people's attention went on the attack. They saw an opportunity to explain away 19.8 percent interest rates. They saw the chance to scapegoat and to scare people and, boy, did they seize the opportunity.

That is what has happened. It is an attempt at scare tactics, to divert people's attention from the fact they are charging rip-off rates. That is the reality.

Mr. D'AMATO. I think the Senator makes a point, and I would like to commend him. I understand and respect people who have a difference of opinion on this issue. For those officials who should know better, however, for the Treasury Department, and the U.S. Cabinet members to say that the stock market fell 120 points because of this legislation is incredible. It is simply not supported by the facts. It is wrong.

And why is the administration scapegoating for the banks? Why do they oppose the legislation? Why have they failed to come up with a constructive alternative? This Senator, when I came to the floor, said let me tell you something, if you have a better way to do this—show it to us. Do not come up and say that this legislation has created a fall in the market, when the facts demonstrate that not to be the case.

Now, if they really believe that, then it demonstrates a shocking lack of knowledge on their part. These people should not be taking that kind of superficial view.

As the editorial from Business Week, November 19, 1991, said, it's about time that the "regulators and politicians * * * stop subsidizing banks by allowing outrageous rates on consumer loans. It is time to end this charade."

Mr. President, I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

STOP SOAKING CREDIT-CARD SHOPPERS

The Fed and the White House are trying to get interest rates down, in order to coax the cautious consumer back into a buying mood. But if that consumer charges purchases to a credit card, the interest rate is apt to be a stunning 19.5%—enough to put a damper on any buyer's zeal.

The credit-card rate has been flirting with 20% in spite of a dramatic decline in what banks have to pay for money. Since mid-1990, the federal funds rate has been cut 13 times and now stands at just 4.75%.

Why have things reached this ugly pass? The answer is that Washington, still stunned by the savings and loan debacle, is treating the banking system with kid gloves. Banks cite the cards' unsecured-credit aspect as justification for such high rates—yet they're snowing mailboxes with new account solicitations.

The truth is that the wide spread between what banks pay for money and what they charge consumers for it is a subsidy to an industry that is rightly seen as shaky. It's also true that, despite lip service to lower rates, Washington has tolerated and even encouraged banks to soak the consumer—to prop up the industry.

On the evidence, banks seem ready to ignore President Bush's call for lower credit card rates. But the banks must realize that if they do not heed the call, they may not get the other things they want—such as interstate banking. And for their part, regulators and politicians should stop subsidizing banks by allowing outrageous rates on consumer loans. It is time to end this charade.

Mr. D'AMATO. It really is time for us to wake up. It is time for us to say to the American people we have heard what they have been saying in the elections several weeks ago. The American people are angry. They know that something is not right, and they happen to be correct. We are going to have a real test to see whether or not we can continue to stand.

I am not suggesting to you that my legislation is the perfect answer to whether or not we are going to stand up for the people and give them a break. I am going to suggest some of the alternatives I have heard—letting the banks continue business as usual, let us appoint a commission, let us have an 18-month study, that is exactly a betrayal of what the people have a right to expect. That is exactly what the people have come to expect from us—nothing, at best a coverup.

I am going to suggest to you that the first thing the Federal Reserve should be doing is getting down there to say, "Hey, fellas, you better get some real economic competition." I see how they can harass and hound the little banker, how they can make it impossible for him to do business. I want to know why they cannot see that there is a lack of economic competition and why it is we have to come to the floor and offer this kind of legislation.

It is about time that Congress became aware of the reality of the marketplace. We need to do something about it and not dismiss it as just business as usual. We need to provide relief to the overburdened, working middle-class mired in a deep recession. It is about time that we began to stand up and do what is right, not because of political expedience but because it is the right thing to do.

I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona [Mr. MCCAIN].

AMENDMENT NO. 1355

(Purpose: To limit the amount of deposit insurance per depositor per institution)

Mr. MCCAIN. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes an amendment numbered 1355.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 207, line 8, before the period, insert the following: "for deposits not described in paragraph (3) and $100,000 for deposits described in paragraph (3)".

Mr. MCCAIN. Mr. President, this amendment will limit deposit insurance to $100,000 of coverage per person per institution for regular deposit accounts. It will also limit coverage to $100,000 per person per institution for retirement or pension accounts. This would cover individual retirement accounts known as IRA's as well as provide passthrough deposit insurance coverage for employee benefit plans and qualified deferred compensation plans.

Mr. President, we are debating the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991. That is why I am offering this amendment, so that we can protect the taxpayers and also reform deposit insurance.

Federal deposit insurance, as we know, dates back to the Great Depression. Congress passed the Banking Act of 1933 in order to provide basic insurance coverage of $2,500 per depositor per insured institution. As we all know, the purpose of deposit insurance was to protect small depositors and to restore public confidence in the banking industry.

We have come a long way from protecting small depositors. We now protect virtually all depositors, big and small, insured or uninsured, and pass the costs of failures and bailouts on to average Americans, the ones we were supposed to be protecting.

The perversity of Federal deposit insurance is exemplified by the taxpayer bailout of the savings and loan industry. Mr. President, I think it is generally acknowledged that the failure of the savings and loan industry, to a large degree, can be directly attributed to the unwarranted expansion of deposit insurance by the Depository Institutions Deregulation and Monetary Control Act of 1980. Basic coverage was increased from $40,000 to $100,000. No longer was deposit insurance for the small depositor. It became the safety blanket for large, sophisticated depositors and freewheeling bankers.

Mr. President, the small depositor now needs protection from unlimited Federal deposit insurance. This amendment will give the small depositor protection from unlimited bailouts while protecting their deposits. This amendment will protect their pocketbooks and their deposits.

By limiting deposit insurance per person per institution, this amendment will encourage depositors with accounts above the limits to spread their accounts throughout the banking system and reduce their exposure to a bank failure. Unlimited deposit insurance and the too-big-to-fail policy have drawn deposits to large banks. Limiting deposit insurance and ending too-big-to-fail will end the flight of deposits to large institutions solely because the depositor believes that the large institution is too big to fail.

Mr. President, I think it is very important to emphasize that this amendment would cover the deposits of 97 percent of the depositors in this Nation whose average deposit, by the way, is $8,000. It would not cover uninsured deposits or deposits above $100,000. The deposits of the average American clearly would be covered, but the average American would not be exposed to the $3 trillion in contingent liabilities now covered by Federal deposit insurance.

Without enactment of this amendment, the legislation will provide little protection to the taxpayer. The combination of this amendment and the elimination of the too-big-to-fail policy contained in the legislation we are considering in my view will protect the taxpayer.

The amendment will have other beneficial effects as well. By limiting deposit insurance coverage and thus limiting the moral hazard inherent in Federal deposit insurance, bankers will have the incentive to limit the risky and speculative activity that led to the taxpayer bailout of the savings and loan industry. It is shocking to me that Congress has not learned the simplest of lessons from the savings and loan debacle, that simple lesson being that unlimited deposit insurance backed by the full faith and credit of the taxpayer will encourage unduly risky behavior, more bank failures, and another taxpayer bailout.

Mr. President, my amendment limits the incentive for banks to engage in unduly risky behavior. It protects the

average American from another enormous bailout.

Most importantly, it protects the checking and retirement accounts of small depositors. Deposit insurance was never intended to be a virtually unlimited contingent liability backed by the full faith and credit of the taxpayer. It was intended to protect the savings of the small depositor and maintain public confidence in our banking system.

I believe that this amendment will restore the average American's confidence in our banking system, protect them from another bailout, and protect their hard-earned savings.

Mr. President, I know the objections to this amendment will be based to some degree on the impact that this might have on the banking industry at this time. I fully appreciate that. But I also think that we should seriously consider the impact on the American taxpayer if we are faced with a large bailout of the proportions that we experienced during the savings and loan crisis.

Mr. President, I think it is important—indeed, vital—for us to protect the deposits of the average American citizen, and this amendment will protect 97 percent of them. I think it is also important that we recognize the public confidence is something which is tenuous, at best.

My friend from New York, who was just discussing his amendment concerning the cap on interest rates on credit cards, makes the argument that it was not responsible for the drop in the stock market that took place a few days ago.

I cannot refute his statement. But I think the volatility of the stock market is clearly affected by whether we as a Congress are able to enact truly meaningful banking reform legislation, of which this is only a part.

Mr. President, I really feel, in the strongest terms, my appreciation for the chairman of the committee, Senator RIEGLE, and Senator GARN, for their efforts, and their continuing efforts to get legislation enacted.

If we are content, if we leave to go home on recess with a very very narrow bill that only recapitalizes the bank insurance fund without significant reforms as contemplated in the legislation before us, I am very concerned about the future stability of the banking industry in this country. I feel this amendment will do a great deal in that direction.

Mr. President, I know the chairman and ranking member, the two managers of this bill, will oppose this amendment. So I have very little optimism about its passage. At the same time, I hope that they recognize, as most financial experts do, that at some point we will have to address this issue of how much of a burden are we going to lay on the taxpayer, because we clearly have seen in the past that if deposits are insured under any circumstances, it will encourage reckless behavior on the part of those in whom we have entrusted these deposits.

Mr. President, I will be very grateful for additional legislation or other ways that we can protect the depositor. At the same time, I think this amendment is a viable and reasonable one.

Mr. President, I yield the floor.

Mr. GARN addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah [Mr. GARN].

Mr. GARN. Mr. President, I understand the concern of the Senator from Arizona and where he is coming from on this amendment. I would only add a very brief history lesson on this issue. Sometimes I wish I was still a freshman Senator and had no memory of the things that had gone on.

But in this particular field, unfortunately, for the last 17 years, I have been part of almost every meeting that has gone on. I was part of the Senate-House conference committee when the decision was made to raise the insurance amount to $100,000 per account. At that time, it was $40,000. The Senate had passed a provision to go to $50,000, thinking that a $10,000 increase would be helpful. And in the conference, it was agreed to go to $100,000.

The reason for that, to put it in the context of 1980, is we had just come out of the highest interest rates, certainly in my lifetime, with 21½-percent prime, and a massive amount of money flowing out of the traditional depository institutions to money markets accounts. The new boy on the block had been invented, and you could pay your mortgage on a third-party checking account on your money market fund.

So that was having a disastrous impact on the depository institutions to have $300 billion leave.

So in hindsight, you can look back and say $100,000 was maybe too much. But in the context of that time, when we were threatened with massive runs on the banks, the reason it was raised to that amount was to put confidence back into the depositors. Congress not only went to the $100,000, but they passed resolutions that year that said beyond the $100,000, we place the full faith and confidence of the American taxpayer, so that you did not have a banking system fall apart.

Now, in light of the S&L crisis, it certainly is correct to say that the exposure would have been much less had we not raised it to $100,000. If the Senate position had been maintained at $50,000, the exposure would have been half. That is all true. But I think it is necessary to see what the situation was at the time.

I will admit that, even with my knowledge of 1991, with the situation in 1980 of that massive outflow of over $300 billion of funds, there needed to be some changes made in order to put consumer confidence back into those institutions so that we did not have massive failures.

I can see the justification that the Senator from Arizona makes. He makes some very good points. But to take away the $100,000 in multiple accounts now would simply cause another crisis of confidence. It is one of those things, How do you get from here to there? I wish I had the answer.

But I must oppose the amendment because I think it would have that impact, and particularly on the small institutions. Most of the independent bankers and the small consumer banks are worried now about the situation of an amendment of this type being passed and you would have a big outflow from their institutions to others. There would be big shifts of money, not only locally, but in regions, as well. And they are very much opposed for that reason.

So although the Senator makes some very good points, and it makes sense in many cases to talk about removing it, from a practical standpoint in the confidence out there in the marketplace with depositors, I think if this amendment did pass, however worthy, you would see a massive shift of funds. It would be mostly the smaller banks in this country that would experience that.

So for that reason, I will oppose the amendment.

Mr. RIEGLE address the Chair.

The PRESIDING OFFICER. The Senator from Michigan [Mr. RIEGLE].

Mr. RIEGLE. I thank the Chair.

Mr. President, my thoughts parallel those of the Senator from Utah. When I started out in drafting this bill, I actually put a provision in such as the Senator from Arizona had suggested. I think if we were starting from scratch with the deposit insurance system, that idea has a lot of merit.

But I think the problem is that we are not starting from the beginning. We are starting with an existing situation. As the Senator from Utah pointed out, I think you would have a lot of money withdrawn from certain banks. But as that money was withdrawn, they in turn would have to call a lot of the loans that they have made in local communities. So you get a contraction effect in the economy, obviously, at a time when we do not want to see that happen.

In terms of where the losses have come from in the banking system, they have come because a number of banks have engaged in too many risky activities; principally, consumer real estate lending, the too readily use of broker deposits, and problems with insider lending. I think it is fair to say, in assessment, that many times troubled banks were not dealt with strongly enough in the early going by the regulators, and they got themselves in deeper trouble.

We have had this problem with "too big to fail," which the Senator from Arizona has mentioned. We have undertaken to correct that here. Yet, even that problem cannot be corrected immediately, as much as we would like to, because we have cornered-in practices that will take the better part of 5 years to undo, in order to do it in an orderly rather than a disorderly way.

So these are the principal factors that have led to the insolvency of the bank insurance fund.

These are the things the bill is designed to cover. With respect to community banks, in many cases we have done some analyses to find out where these multiple accounts are found, and they tend to be found in community banks where you have a lot of retirees—particularly in small towns across the country—who have chosen to put their entire life savings in a local bank, and to break them up in these various accounts. Sometimes they will do it when they sell a business, sometimes when they have sold their home, or when they have received insurance payments. Also, we found that nonprofit organizations tend to place large amounts of cash in local banks. So they have deposited funds in these multiple accounts in order to maintain the deposit insurance protection. I grant that this was not the original design of the system. In effect, a kind of an anomaly has developed.

A survey of community banks was done in 1990 by the Independent Bankers Association, and among those responding to this survey, on average, 45 percent of their depositors hold more than one account, and individuals with four or more accounts comprised, on average, approximately 30 percent of these community banks' total assets. The IBA concluded that limiting the number of insured accounts per institution "would severely and permanently disrupt the ability of community banks to fund their lending activities and support the financial needs of their community and State."

I think it is fair to say that a smaller deposit base from community banks will result in fewer loans to small businesses, to farmers, and to consumers at that level. So that is part of the concern here, the fact that if we do this now, we may be, in effect, adding to a problem rather than solving one.

Having said that, the concerns that the Senator has raised have been concerns we have had. If we were starting from scratch in the system, I think our views might well be different. For those reasons, I, too, would oppose the amendment.

Mr. SASSER. Mr. President, I rise today to oppose this amendment to limit deposit insurance protection for individuals. I do not believe that limiting coverage at institutions would achieve the goal of reducing the Government's contingent liability, instead, it takes a blow at communities, individuals, retirees, and homeowners. During this sensitive time in our economy, I do not think that we should be making changes to deposit insurance that could further reduce consumer confidence and exacerbate the recession.

All this amendment will do is shift funds. In order to get full coverage, the customer could just go across the street and open another account. Moreover, I do not believe making changes to individual deposit insurance coverage at this time would be good for the banking system, the economy, or American savers.

In particular, it would be a vote of no confidence in our Nation's community banks. Mr. President, it is our community banks that are the mainstay of our banking system, if not our economy. They have by and large rejected the speculative investments that bigger banks made in the 1980's. They are the most profitable segment of the banking system. To adopt this amendment would be to attack those banks that have made the productive investments and loans that our economy desperately needs. This amendment could cause deposits to shift from well-managed community banks to too big to fail institutions that pose the most risk to the system. The extension of the Government's contingent liability emanates from the too big to fail policy and from brokered deposits—not individuals.

Mr. President, I think today, more than at any other time since the Federal Deposit Insurance System was instituted, faith in the system is at a low point. The Nation's banking system is in crisis. People do not know what to expect. Pulling the rug out from individual depositors could be very harmful. All we need now is for people to start putting their money under their mattresses. I believe that public confidence could be further eroded if the number of insured accounts that an individual may have at an institution were limited.

The former Chairman of the FDIC, William Seidman, warned of negative public perception of cutting back coverage. He testified before the Senate Banking Committee earlier this year, that "while streamlining deposit insurance coverage may have some benefits in terms of shrinking the safety net, we do not know what the full effects will be * * * any negative effects on public confidence must be weighed against changes to coverage that may have no meaningful reduction in risk to the fund."

Mr. President, I believe that any further deterioration of consumer trust could be devastating. The attempt to reduce the drain on the insurance fund by limiting accounts could in itself actually make it worse.

As the counsel for Government affairs for Consumers Union, Michelle Meier, testified before the Senate Banking Committee, "coverage restrictions could increase, rather than decrease, the instability of the banking system."

The General Accounting Office has strongly recommended that deposit insurance coverage for individuals not be changed now. Comptroller General Bowsher testified before the Banking Committee on the similar Treasury proposal to limit coverage. He said "Treasury places more emphasis on reducing deposit insurance coverage * * * than GAO believes is possible or consistent with maintaining market stability."

Individual depositors do not have the sophistication to determine the condition of an institution—regulators have a difficult enough time with that and that is what we have regulators for.

Individual depositors are not causing the bank failures—bad loans, bad regulation, and excessive growth funded by brokered deposits are the root of the problem. The massive failures of banks were not caused by retired people who took lump-sum pensions or who sold their homes and put the money in the bank for security. We should not punish individual depositors for the ills of the banking system.

As a result of limiting deposit insurance, Mr. President, depositors will find other ways to protect their money—bringing greater instability to the system and putting the insurance fund at increased risk. Reducing the number of insured accounts could have a significant impact on where people place their money.

GAO says "it is less costly and easier to move the deposit than it is to determine if the bank in which it is placed is sound, depositors who feel their funds are at risk will tend to move their funds at the first sign of any problems."

Large depositors who want to develop a business relationship with a bank would be more likely to move their funds to too big to fail institutions. Consumers Union expressed this concern:

> Depositors that are nominally uninsured can receive 100 percent insurance coverage by placing their funds in large institutions that will never be liquidated. Consequently nominal deposit insurance coverage restrictions will do more to increase the competitive advantage of large banks—and undermine the competitive position of small- and medium-sized banks—than to force all banks to compete on the basis of their balance sheets.

While the bill, S. 543, works toward ending the too big to fail policy, it is not eliminated. The failure of a bank deemed to pose systemic risk would continue to be covered in full. This distorts any existing grain of market discipline. As long as some banks can be too big to fail, depositors will see those banks as safer, whether or not they really are.

The bill provides the Federal Reserve and the Treasury Department the discretion to deem the failure of an insured depository institution as a systemic risk if it "would have serious adverse effects on economic conditions or financial stability." With this loophole, there will be a strong incentive for large depositors to put their money in the big banks, without regard for the health of the institution. If a large bank fails, then the cost to the insurance fund would be even greater.

Moreover, community banks are stronger than big banks. If one of the goals of limiting deposit insurance coverage is promoting greater market discipline—to shift deposits to safer banks—then the effect of this amendment would do just the opposite. People will spread their money around to a number of banks, or move their funds to too big to fail institutions. There will not be the market discipline to keep deposits in smaller banks that have demonstrated better safety and soundness.

A recent article in the Wall Street Journal reported that William Seidman, after leaving his position at the FDIC, said that the banking system would be best served if many small banks survive. Seidman said "keeping small banks healthy will spur competition and help the banking system survive."

Moreover, as deposits shift to larger institutions in the big cities, smaller institutions in communities throughout the Nation would have fewer deposits. If smaller banks have fewer deposits, then it will become more expensive for them to make loans. Smaller banks will have to pay higher interest rates in order to attract depositors. They will then pass this cost along to their borrowers. As a result, loans from community banks, which the majority of small businesses in this country depend on, will become increasingly more expensive. Moreover, with the decreased deposit base, the lending capacity of community banks will decline.

Moreover, limiting deposit insurance coverage could be a disincentive for saving and could also result in lower premium income to the fund. With the low rates of savings in this country, we should be sending a message encouraging savings and planning for retirement. We should give people a safe place to save for retirement. During the 1980's, the Nation's savings rate fell in half and has been hovering at 4 percent compared to over 9 percent during the 1970's.

If limiting coverage is the desired goal, I submit that the managers of this bill should instead make a serious effort to end the too big to fail policy. Under this policy, foreign deposits of large banks have been made whole, even though not one dime of insurance premiums have been paid on foreign deposits. To me, that is a gross extension of the Government's contingent liability. And that stands in sharp contrast to the deposit base at a community bank, some of which may be over $100,000 but on all of which insurance premiums have been paid.

Furthermore, brokered deposits—deposits placed by money brokers on behalf of large institutional investors—should be curtailed more than they are. They have been the catalyst for excessive growth of poorly managed institutions. If one wants to limit insurance coverage, brokered deposits, and too big to fail are where I would begin, and leave alone retirees and other individual deposits.

Mr. President, the issue of limiting the number of insured accounts per institution is not simply of interest to bankers, restrictions on multiple accounts are opposed by: the American Association of Retired Persons [AARP], the American Bankers Association, the Independent Bankers Association of America, the U.S. League of Savings Institutions, the National Bankers Association, the American League of Financial Institutions, the Conference of State Bank Supervisors, the National Association of State Departments of Agriculture, the National Conference of State Legislatures, the Manufactured Housing Institute, the National Association of Home Builders, the American Consulting Engineers Council, the American Society of Travel Agents, the Financial Managers Society, the National Association of Retail Druggists, the National Society of Public Accountants, the American Association of Crop Insurers, the National Farmers Organization, the National Farmers Union, and the National Grange.

Mr. President, in conclusion, if deposit insurance coverage is limited, public faith in the system could be diminished, there could be further incentive for large depositors to shift their money around and to put their deposits in too-big-to-fail banks—which could expand the Government's contingent liability even further. This could put smaller institutions at a competitive disadvantage, cause capital to leave communities, make capital more expensive, and create greater losses to the fund.

I strongly urge my colleagues to vote against this amendment. I yield the floor.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment offered by the Senator from Arizona.

The amendment (No. 1355) was rejected.

Mr. GARN. Mr. President, I move to reconsider the vote.

Mr. RIEGLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE BANK SECURITIES REGISTRATION AND ADMINISTRATION ACT OF 1991

Mr. WIRTH. Mr. President, when the Banking Committee considered the bank reform package, I worked to include the provisions of S. 380, legislation I introduced in the last Congress and again this year. These provisions became part of the committee print and the legislation ultimately reported. This legislation corrects an anomaly in our securities laws in order to provide additional protection to investors who purchase securities offered by individual banks and thrifts.

Under current law, securities issued by a bank or thrift holding company, like securities offered by most businesses, must comply with Securities and Exchange Commission [SEC] registration and reporting requirements. Securities issued by an individual bank or thrift, or securities guaranteed by a bank, however, are exempt from SEC oversight. Jurisdiction over such securities is instead granted to the primary regulator—the Office of Thrift Supervision, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation—for the institution issuing the security.

This legislation would repeal the exemption to the registration requirements provided banks and thrifts by the Securities Act of 1933. It would also repeal a similar exemption to the periodic reporting requirements of the Securities Exchange Act of 1934. With these changes, banks and thrifts would have to register their publicly offered securities with the SEC and file regular financial reports with the Commission. Importantly, deposit instruments of banks and thrifts, such as savings and checking accounts, or certificates of deposit, would not be subject to SEC supervision.

The Bank Securities Registration and Administration Act is designed to promote investor confidence and improve the effectiveness and efficiency of securities regulation. The proposal would protect investors by promoting full and fair disclosure of important financial information needed to make sound and informed business decisions. Because four different agencies currently established these standards, investors in bank and thrift securities run the risk that the information they receive regarding their investment is inadequate or not directly comparable. This system results in investor confusion, duplication of regulatory efforts, and higher public and private costs.

The proposal has the strong support of the SEC and a similar plan was supported in 1984 by the Task Group on Regulation of Financial Services, chaired by then Vice President George Bush. The task group's recommendations were endorsed by a number of bank and thrift regulatory agencies, including the Office of the Comptroller of the Currency, the Federal Deposit

Insurance Corporation, the Federal Home Loan Bank Board, and the Federal Reserve Board, as well as the National Credit Union Administration. The administration included similar provisions in its bank reform package.

Unfortunately, I understand that the recent amendment to S. 543 removed these provisions. I would like to discuss this matter with the chairman of the Banking Committee, Senator RIEGLE. Is it correct that the bank and thrift securities registration provisions have been removed from the bill along with the provisions to repeal the Glass-Steagall Act?

Mr. RIEGLE. The Senator is correct. Those provisions have been deleted from the overall package.

Mr. WIRTH. I believe Senator RIEGLE made the right decision in removing the Glass-Steagall provisions so that our efforts and attention can focus on more urgent priorities. Although I do not agree that the securities registration provisions should be tied to the Glass-Steagall provisions, I recognize that others feel that way. Like the chairman, I do not want to delay passage of this legislation.

Accordingly, I did not object to consideration of the new package and will not seek to restore my provisions to the legislation. However, I would like to determine if the chairman would be willing to move the securities registration provisions as free-standing legislation.

Mr. RIEGLE. I thank the Senator for his willingness to refrain from pursuing his provisions in order to help the package move forward. I agree that passage of the securities registration proposal does not have to be tied to passage of Glass-Steagall repeal. The Senator has introduced the securities registration requirements as S. 380 and I will look at moving that legislation during the second session of the 102d Congress.

Mr. WIRTH. I thank the chairman for his commitment to pursue my proposal and look forward to working with them on this matter during the next session.

Mr. RIEGLE. Mr. President, I am not aware of any other Senator being willing to offer an amendment tonight. Senator GRAHAM of Florida intended to, but he has come down with a case of laryngitis and is not in a position to do that tonight. I know Senator GARN has an amendment by Senator MURKOWSKI that he will lay down tonight. It is the last order of business and will become the first pending order of business in the morning.

I want to say to Senators that have amendments that they wish to offer tomorrow, that it is very important that we undertake to finish this bill tomorrow. The majority leader stressed that. There are other items on the calendar that need to be dealt with. We have a situation where we are very near the end of the session. This bill, when finished, is going to have to go to conference and come back. We have other items to attend to in the Banking Committee, such as the RTC refinancing. So it is very important tomorrow that we are able to move through these amendments as rapidly as we can, to seek and to get time agreements, debate these issues, have our votes, settle these questions, and get to final passage as early as we can tomorrow.

Mr. DOLE. Will the Senator yield?

Mr. RIEGLE. Yes.

Mr. DOLE. There is a distinct feeling on this side that we are wasting a lot of time. There are 40-some amendments floating around out there. After a full day today, we have had one vote on a sense-of-the-Senate resolution. We are just marking time here for some reason. Nobody quite knows why. We are not going to finish this bill. If the Senator from Michigan knows something the rest of us do not know, how we are going to dispose of all of those, plus others that have not been introduced yet, I think it would be helpful to all of us.

My view is that we are waiting for the House to send us over some little bobtail version of banking reform, which we can act on later this week. I do not think anybody feels we are going to finish this bill tomorrow, or Wednesday, or Thursday, or Friday, or Saturday.

Mr. RIEGLE. Well, let me respond to the Senator. I certainly hope that forecast is not accurate. Maybe he has information I do not have. We had a meeting last night with members of the staff over at the Treasury Department, and the view in that session, which included senior staff members of both sides of the aisle of the Banking Committee, was that we ought to move ahead with the bill today. And we have resolved three of the four major items of contention in the bill. That does not mean we have done so to everybody's perfect satisfaction, but the Glass-Steagall issue, interstate banking issue, and the insurance issue have already been decided. The consumer issues were left as the main portion of the bill around which there was contention. We are going to lay that down tonight in the form of the Murkowski amendment. That will be the first issue out of the box tomorrow.

Frankly, my own view is that the amendments that are left are—and, of course, every Senator's amendment is important—are not in the same category of size and significance as the major issues that have already been settled on this bill. The representations made to me by the Treasury Department is that they want to get this bill done. They feel strongly that the provisions we have incorporated are important and ought not to be dropped over the side. I agree with that.

So it is my intention to try to move on through the bill tomorrow. In the Senate, one person, two people, three people can throw a monkey wrench into it. This legislation needs to pass. If these problems are not dealt with, they will haunt us in the future. I hope we will pass a bill that is broad enough and does enough to try to really put some strength into the banking system.

Mr. DOLE. If the Senator will yield, I wonder, maybe he has clarified the work. Secretary Brady would like to do precisely what you have outlined. I am not on the committee, and I have not been deeply involved in this legislation, but, as I look over the schedule for the remainder of the week, I am fairly optimistic about maybe adjournment by the weekend. That is why I wanted to get some reflection from the chairman, and maybe the ranking member, if there is any—if it took all day to dispose of a sense-of-the-Senate resolution, and there are 42 amendments left, I do not know. Maybe the others are not that important. A sense-of-the-Senate resolution is not too heavy-lifting around here.

Mr. RIEGLE. If the Senator will yield, sometimes a sense-of-the-Senate resolution—often starts out in a different form, and then ends up in that form. That is sometimes one of the ways we settle these issues. We started about 1 o'clock today, and we had a number of Members coming in from out of town. Some were not able to get here in time to offer their amendments. I regret that we could not do much about it.

As I look at the list for tomorrow, the Murkowski amendment which we will start out with, and another amendment by Senator COCHRAN in that same area, I view as sort of the critical outstanding amendments. There is a pay-as-you-go amendment by Senator KERRY of Massachusetts; one by Senator GRAHAM of Florida; maybe an issue between Senator DOMENICI and Senator BRYAN, although I am hopeful that issue might be settled; and then a manager's amendment. I am not aware of other huge, looming amendments. That is not to say something else will come up later—you never know around here, because amendments can be invented at the blink of an eye.

My representation to the Senator, genuinely, is that I think the main issues are behind us. That is not to say everybody is perfectly satisfied. There has never been a time when everybody is around here. I invite the ranking Member to comment, because he would have his sense for it as well.

Mr. GARN. I am happy to respond to the chairman and the distinguished minority leader that we do have a very difficult problem here. There is no doubt about it. I made some suggestions last Thursday, that I felt it was a very difficult process, mainly because of the House of Representatives, which

I have experienced many times in my career of passing bills on the Senate side and not having the House do anything with them. I was afraid we might be heading down that track again.

It was my suggestion that we negotiate between the House and Senate and the Treasury Department very much in the form that we were able to do on the unemployment bill, as well as the civil rights bill, rather than doing it on the floor. Having said that, no one is more disappointed than I am at the turn of events, and the fact that we have not been able to achieve comprehensive bank legislation. I hope that it does not bog down, as the Senator from Kansas has said. I hope that Senators will come and offer their amendments and we can come to a conclusion.

In the final analysis it may not work out and we may end up coming back to what I suggested last Thursday. In the meantime, short of a willingness to do that on the part of the administration and on the part of others, I think we must go ahead and proceed to process the amendments until people are willing to negotiate.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. GARN. I yield the floor.

Mr. RIEGLE. Yes, I yield.

Mr. DOLE. I will make one other point and then I am happy to yield. I must say I am encouraged, I just say that to the Senator from Michigan and the Senator from Utah, the managers of the bill. I think it is important that we have this information prior to our party caucuses tomorrow noon because I think there is a desire—the majority leader and I spent some time today going over what might be called the balance of the program this year. Banking was certainly a high priority, should be a high priority. And I would hope that we could have banking reform for all the reasons that have been spelled out by the managers and many others in and out of the administration.

So I am somewhat encouraged. There are not as many amendments I have been told. Apparently many of them can be disposed of rather easily. So if we could conclude action on this bill if possible tomorrow, that would certainly help accelerate the other matters that would be stacked up behind the banking reform legislation.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Maryland.

Mr. SARBANES. Mr. President, I simply wish to observe this is one of those bills on which amendments can be manufactured infinitely. There is always that.

I think the chairman is right that there are only a few that still represent major issues. And if Members are prepared to address those, decide them one way or another and then forebear trotting out every possible amendment that could be put on the bill, I think there is a chance that this bill could be finished up. That would give us an opportunity to go to conference and be able to work out a number of these issues and present both houses with a bill.

The administration, I understand, is very anxious to have legislation. I know today was a slow start, but Monday is always a slow start. I tend to agree with the chairman and ranking member. I think there is a real chance you can get this thing moving and work through these amendments. It has taken a lot of work to get this far, and it would be preferable to try to carry it on through rather than have it fall back.

Mr. RIEGLE. If the Senator will yield for a couple of other observations, and I appreciate the observations of the minority leader because he is going to be key in helping us bring this bill to a conclusion.

We have had some extraneous events also take place. We had the bill go down twice in the House, so that has been one factor, because it is not exactly clear what the other body is going to finally decide to do. So we have been attempting to steer our own course without any real reference to what may be happening there.

The other thing is we were coming along quite well on Friday when the unemployment compensation package blew apart, as Senators will recall. I guess it was actually on Thursday night. And then we got involved in that, and so ours had to go off on the side track. Frankly, I think, we would have most of these things now finished, but we had to stand aside while that issue got sorted out. So we come back at it to try to finish up now.

I think the point the Senator from Maryland made is well taken in the sense that, on a big, complicated bill like this, people can invent amendments until the cows come home. I hope once we get the main ones settled, we try to accommodate as many Senators we can on the major amendments. We are working on that now, and we took some today.

In fact, the sense-of-the-Senate resolution was one that got changed. But one other thing, just to put everybody on alert, there was one amendment offered today to bring in the RTC issue in part, RTC restructuring into this bill. It has been my position it is better to leave the RTC out of this bill. It is complicated enough in its own right, the funding and an additional $80 billion for that and the restructuring part. But sometime between now and adjournment that issue is going to have to be dealt with.

The preference of the ranking member and me has been to not have that be part of this bill. This bill is complicated enough without throwing that into it. But they both must be done because both funds, we are told, will be empty by the end of this year. So the problems cannot be resolved either in the savings and loan industry or banking industry without both these bills passing.

I only make that point to say this: We cannot get onto the RTC bill separately until we finish this bill. We have to get this bill out the door and into conference and bring it back and then set to work on the RTC bill. So part of the time today was to try to find an accommodation amendment that would not bring those two together here unless that ultimately is the will of the Senate.

So, I just want to assure the minority leader we are doing everything we possibly can to move this in an orderly, fair, and rapid way. This is legislation that has to pass. There are going to be Senators who are going to vote against it in the end, no matter what is in it because there is $70 billion of borrowed money in this bill, so it is an easy bill not to like.

We are trying to put around it the things that ought to be there to give it some balance and help make the banking system more solid. I think if Members will work with us tomorrow I am in hopes we can finish the bill. If one person or two people decide they want to change the works, you know that is something that——

Mr. DOLE. If the Senator will yield, I just say I appreciate not only his statement, and that of the Senator from Maryland and the Senator from Utah. I will certainly do all I can to be helpful to the managers and I will be taking my guidance from the Senator from Utah [Mr. GARN].

But I would say again I am much more encouraged. Apparently we got misinformation, or I did, on how many issues were left and how many amendments were left. I understand if somebody just wants to frustrate your efforts they can continue to manufacture amendments. I hope that is not the case.

It seems to me that if you have come this far, there is every good reason to try to complete action, and we want to be helpful. I know I speak for the administration and Secretary Brady and I think a number of my colleagues on this side. Some may not agree completely. But I will be working with Senator GARN on this side, the Senator from Utah.

Mr. RIEGLE. I finally say it will be my intention in the morning, after we worked our way through the Murkowski amendment that will be laid down tonight, and I review that major remaining issue that we are going to be tied up with the first thing in the morning and set to go, to endeavor to reach a time agreement on these. Any help we can get from the leaders on

both sides and Members will be greatly helpful to us in getting an orderly program together and work through it.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah [Mr. GARN].

AMENDMENT NO. 1356

Mr. GARN. Mr. President, I send an amendment to the desk and ask for its immediate consideration. I am offering this amendment on behalf of Senator MURKOWSKI.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. GARN], for Mr. MURKOWSKI, proposes an amendment numbered 1356.

On page 416, line 1, strike all through page 487, line 13.

Mr. GARN. Mr. President, I do not intend to have debate on this issue tonight. Senator MURKOWSKI agreed that it be laid down and be the first order of business in the morning to be debated. So I would put all of my colleagues on notice that this will be the first order of business and that we do expect a rollcall vote on it.

CREDIT CARD INTEREST

Mr. GARN. While there is a discussion going on here I would simply make some remarks on a different subject. We have several times during the day had various Members of the Senate come over and talk about the interest rate ceiling cap on credit cards. I certainly am smart enough to understand the politics of that issue. It is overwhelming in favor of the amendment that was passed. In fact, I was the only one that spoke against it last week and the only one that spoke against it today at quite great length. But I think it is a very sad situation that the Senate has succumbed to what appears to be a very politically popular issue, when it is just bad public policy.

It is not easy to stand here on the floor and talk against an amendment that is so popular. But at least this Senator cannot stand by and look at the potential harm that would occur if that becomes law. So I want everybody to know that if, at the end of this process, we come back from the House with that amendment in, I will not support this bill whatever is in it, RTC funding or anything else, because as a matter of principle there is something wrong in a free market society when we are attempting to establish ceilings on anything.

I can remember when Richard Nixon succumbed to that and got into wage and price controls when he was President. And particularly to use one example, on beef, he said you can only charge so much per pound. What happened? There was not any beef because the farmers and the cattlemen would not sell at an artificially mandated price by Government that was low and would have cost them money. So they just killed them and buried them.

When they finally wised up at the distortions that were occurring in the marketplace as far as those price controls and the Government arbitrarily deciding what supply and demand ought to decide, they took them off. Then there was an explosion of prices. And who suffered the most? The consumers, because now they were paying for the lost production mandated by those price controls.

We have seen examples of that over and over again. What we are talking about now is the price of money and people. I am amazed with what is happening in Eastern Europe and the Soviet Union, when we talk about free markets. We are going in just the opposite direction. There are plenty of banks that charge 10, 12, and 14 percent.

And to constantly use the big money center banks, I do not dispute the fact that 7 out of 10 are charging 19.8. So what? There are plenty of banks that are not. There are about 14,000 banks in this country. We are not like the European countries where they have a very centralized banking system with only three or four of five banks.

We have credit unions. With all this talk about these big bad banks, if you want to hear a firestorm, talk to the credit unions, the little mom-and-pop credit unions around this country who are equally disturbed with this amendment. And what you will do is probably, if it passes, deny about 30 percent of the people who now have credit cards that they will have one. They will just simply take away the more risky cards because you cannot compare credit card interests to secured loans like a home. If you do not pay your house payment, they can repossess your house. If you do not pay your car payment, they can repossess your car and get some value out of it.

There is absolutely no security behind this. It costs a great deal more to administer and the default rates are much higher. That is why the interest rates are higher.

But the point of it is there are a lot of banks who charge a lot less. At least that is the way I was brought up. In this country, there are a lot of products I go shopping for. And if I think a particular store is too high, I go to a different one. I find a lower price.

I do that with gasoline. I do that with clothes. I do that with most everything I buy.

And you can do that with banks. If you think they are charging too much for their services, you find one that is not. Maybe that is old-fashioned. But at least the Senate decided last week, with only 19 of us voting against, that that free market principle of supply and demand and providing competition by going someplace else and saying I am talking away your business does not work anymore.

Well, beyond the basic principles, this Senator does not believe that Congress is smart enough to determine prices in this country. They did not do a very good job of that in the Soviet Union—they have no idea what anything costs, or what its value is—and in Eastern Europe when we found out what kind of economy they had, and they are struggling to break out of that.

But beyond the basic principles, there is an issue of $160 billion of costs to the American taxpayers for the failed S&L's. And one of the most valuable assets the S&L's have is their credit card business. Their real estate business certainly has not been good. You take away that ability to earn profit and you have devalued the value of that franchise and you will have a lot more of them in the RTC.

So people feel good that we can mandate to knock off 3 or 4 percentage points off their credit cards and we cost them another few tens of millions, if not hundreds of millions of dollars, in another area.

But maybe the Senate just feels that they can get away with that. And they are insulting the intelligence of the average citizen out of this by saying, "Hey, we are going to be real popular, and we going to lower these rates for you." But they are not gong to tell you what it is going to cost you out of your pocket in your tax bill when there is a lot more failed S&L's out there, and when we have taken a lot of profit out of the poor little credit unions.

And all we hear is the big debate about the big money center banks. In my whole career in the Senate, they have always been the boogeyman; 8 or 10 or 12 of them. Well, I would like the American people to remember that there are 13,000 to 14,000 banks out there, several hundred credit unions are still left, hundreds of S&L's that are still around. And there is a lot of other ways, too, that people can get credit cards from nonbanks. There are many other businesses that issue VISA and Master Card and American Express.

I hope we would not continue this political farce. I think I have seen the U.S. Senate the last few days at its worst as far as the demagogic political issue that I understand. I suppose my mail is 9 to 1 against me standing up here and speaking against this. But I would like to think sometime, just once in a while, that the U.S. Senate could stand up for good public policy rather than wetting their finger and deciding what is politically popular at the moment.

This is bad legislation. It is bad public policy. And I do not really care how many times tomorrow my colleagues run out here to get on TV and yell and scream about how they are the great saviors against those big New York City banks, and how we are going to save you, they ought to think of the implications of how it could go further to other products.

And I do remember, and remind those who are old enough to remember, Richard Nixon's wage and price controls. What an absolute, total, and complete disaster they were.

Congress should have no right to interfere in the free market. We should allow it to work as it was supposed to work and intended to work in a democratic free society.

And if, as some charge, there are antitrust violations here, then the solution to that are the antitrust laws and the Justice Department pursuing it if there is collusion. If there is, I am not defending that. But that is not getting at the problem if we merely place arbitrary ceilings.

So if I am the only one left in the U.S. Senate who is going to stand up and give this speech every time someone on the other side gives one, I will give one, and hope the American people will start to wake up that this is a political gimmick to make them feel good.

We have a lot of Senators out here who are coming over and asking me, "Well, how do we get rid of this?", even though they voted for it. What that means is that they wanted to vote for it for the political impact but they certainly hope it goes away some way.

Well, I do not have the solution to that. I really do not. But if it stays as part of this bill, as much as I want a good bill to pass, I will guarantee you that at the end of this process, if it comes back in the House with this in, this Senator will vote against it.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is to so ordered.060

MOAKLEY REPORT REGARDING MURDER OF JESUIT PRIESTS

Mr. KENNEDY. Mr. President, 2 years ago, members of El Salvador's United States-trained Atlacatl Battalion entered the University of El Salvador and committed one of the most unconscionable acts in that country's long and brutal civil war—the vicious murder of six Jesuit priests, their cook, and her daughter.

Those murders shocked the conscience of the world and spurred Congress to take long overdue action in cutting aid to El Salvador. United States pressure forced the Government of El Salvador to take action against those responsible and, in a major historic breakthrough, the Salvadoran Government convicted two officers—a colonel and a lieutenant—for human rights violations. These convictions sent an important signal that the days of impunity for human rights violations by the military were numbered.

Now, in a disturbing report released today, Representative JOE MOAKLEY, the chairman of the Speaker's Task Force on El Salvador, has presented new allegations that the masterminds of the atrocity remain free in El Salvador.

The report concludes that there is strong circumstantial evidence to suggest that the crime was plotted by senior Salvadoran Army officials, including the current Defense Minister, the Deputy Defense Minister, the Commander of the Air Force, and the Commander of the Army's First Brigade, and that subsequently, the army initiated a coverup, destroying critical evidence and blocking the judicial investigation of the murders.

According to Representative MOAKLEY, all of the information presented in his report was already known by the Bush administration.

All of us who care about human rights owe a debt of gratitude to Representative MOAKLEY for the progress he has made—in the face of innumerable obstacles—in the investigation of these murders. His perseverance and commitment to justice have led to new evidence which otherwise would never have been brought to light.

If true, the evidence in his report makes a mockery of the trial of the murderers of the Jesuits and our continued military support for the Government of El Salvador. It also raises serious questions about the good faith of the Bush administration in pressing for a full investigation of this crime.

The Foreign Operations Act of 1991 required the President to terminate all military assistance to El Salvador if he determined that its government had failed to conduct a "thorough and professional investigation into, and prosecution of those responsible for, the [Jesuit] murders."

The President found that the Armed Forces' cooperation in the investigation had "not been satisfactory." He found that military officers had provided "sketchy or contradictory testimony." He found that their testimony and actions had "raised questions about possible involvement beyond those currently indicted." And he found that important "questions remain[ed] unanswered." Despite these findings, the President failed to terminate military assistance to El Salvador.

On October 31, Senator DODD and LEAHY, joined by Congressmen OBEY and MOAKLEY, expressed to Secretary of State James Baker their concern that the President had not terminated military assistance to El Salvador. They requested Secretary Baker to provide Congress with a comprehensive report January 1, 1992, on the extent to which the government of El Salvador has conducted a thorough and professional investigation and prosecution of those responsible for the murders.

Congressman MOAKLEY's report makes it essential for the administration to provide Congress with more than another whitewash of events in El Salvador. The Moakley report lists considerable evidence—including eyewitness accounts—indicating that the decision to murder the Jesuits was made at a meeting of officers on the day before the killing took place.

The administration should respond to this evidence in detail. It should indicate when the Department of State and the Central Intelligence Agency first became aware of this evidence and why the administration did not make it available to the Salvadoran judicial system. And it should explain why the President failed to terminate military aid.

If America is to retain its role as the leader of the free world, it should be in the forefront of support for the ideals of freedom and democracy—not the forces of corruption and repression. It is time for Congress to insist on better answers than we have had so far from the Bush administration.

I ask the unanimous consent to include the text of Representative MOAKLEY's report in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

STATEMENT OF REPRESENTATIVE JOE MOAKLEY, CHAIRMAN OF THE SPEAKER'S TASK FORCE ON EL SALVADOR, NOVEMBER 18, 1991

This is, I suspect, the final statement that I will make as Chairman of the Speaker's Special Task Force on El Salvador, The Task Force was created to monitor the investigation into the murder of six Jesuit priests, their cook and her daughter at the University of Central America (UCA) two years and two days ago. Since the Task Force was created, we have issued one main report supplemented by occasional statements on my part and interim reports from staff.

I do not intend to repeat, in this statement, what we have said before. I want, instead, to complete the record to the extent that rules of confidentiality and good faith allow me to do so.

I find this desirable because I felt from the beginning that the people of El Salvador deserve as full an accounting as possible of what is known about the Jesuits' case and the resulting investigation. I find it necessary because our Task Force was charged by Speaker Tom Foley with sharing what we learned what the Members of the House and with the American people. I find it important because of a statement from the Government of El Salvador that the "Jesuits' trial showed that our criminal justice system works." And I find it worthwhile to respond to a book length rebuttal of our work

that was issued by something called the Central America Lawyers Group. According to that group, none of whose names are listed in the publication, "the Moakley Commission indicts the entire El Salvador Armed Forces as being responsible for the murders of the priests, yet presents no evidence of any specific orders, general policy, or permissive environment fostered by the High Command demonstrating institutional guilt."

I cannot fulfill my obligation as Chairman, nor can I respond to the criticisms that have made, without explaining more completely the basis for some of the statements I have made concerning the investigation in the Jesuits' case and the subsequent trial. I have contended, for example, that high-ranking military officers knew soon after the crimes were committed who was responsible but failed to come forward with that information. I have also stated my belief in the possibility—not the certainty, but the possibility—that the murders were ordered by senior officers other than Col. Benavides, the man who has been charged—and now convicted—of doing so. Although I have cited a number of reasons in previous statements for my beliefs, other information has not been cited because the sources of that information were not willing to be identified.

Today, for reasons of completeness, I will cite that portion of the information provided to us in confidence that I believe is most credible and that is most central to the statements I have made in previous reports. In so doing, I emphasize that this statement is based entirely on information provided directly to the Task Force by Salvadoran and other non-classified sources. In fact, aside from some cable traffic that was reviewed very early in our work and that is not relevant to anything in this statement, I have not sought—nor have I received—significant access to classified information or documents.

Before continuing, I want to mention a couple of related things for the record.

First, I believe that those in El Salvador and in the United States who have suggested that our Embassy orchestrated a cover-up of this murder case simply do not know what they are talking about. There is no question that the Embassy made some poor judgments during the difficult and often chaotic process of monitoring this investigation. But Ambassador Walker, his legal officers Richard Chidester and Stu Jones, and other key Embassy personnel devoted thousands of hours to this case and to the effort to see that justice would be done. Although the Ambassador is restrained by his position and responsibilities from detailing many of these efforts, I know that he has acted consistently and at times courageously in pursuit of the truth.

Second, I want to acknowledge the fact that, despite my criticisms, the Salvadoran judicial system is making important progress. The Jesuits' trial, the recent indictments of a number of wealthy Salvadorans in a bank fraud case, and the resolution of the Zona Rosa case involving the murder of U.S. marines—all represent important steps forward. In addition, reforms resulting from the peace negotiations should provide the judicial system with important additional resources and should lead to the development, in time, of a professional civilian investigative capability. The conviction of Col. Alfredo Benavides in the Jesuits' case does, indeed, prove that a high-ranking Salvadoran military officer can be held accountable for the murders of prominent people provided there is sufficient international attention and pressure brought to bear on the case. This is indeed a limited accomplishment, but it is an accomplishment nevertheless.

Third, I want to give credit once again to the President of the Supreme Court, Mauricio Gutierrez Castro and the judge in the Jesuits' case, Ricardo Zamora, for their courage and skill in pushing that case forward. And although I have been critical of President Alfredo Cristiani at times, I do give him credit for encouraging the military to cooperate in the investigation and for the symbolic importance of his willingness to testify personally in the case. I believe the President was genuinely shocked by the murders of the Jesuits; that he made a sincere effort a the outset to push the investigation forward; and he insisted—at critical moments early in 1990—that the armed forces accept responsibility for the crimes. Without his efforts I do not believe that the most direct perpetrators of the crimes would ever have been identified.

Finally, I want to extend my thanks to those in the Salvadoran armed forces who did come forward voluntarily—albeit confidentially—with information in this case. In saying this, I do not mean those who simply passed on rumors, those whose stories are contradicted by other facts known to the Task Force, or those who offered information in return for favors of some sort. I am speaking of individuals who are experienced, respected and serious people, who were in a position to know the information they conveyed, who understood the harm done to the Salvadoran armed forces by the murders of the Jesuits, and who do not share the view that military officers in that country should be above the law. It is these respected—and I believe credible and sincere—individuals who are the source of much of the information described below.

I want it understood that these people incurred great personal risk in talking to the Task Force. Although I encouraged them to come forward and testify officially concerning their knowledge in the case, they refused to do so. All cited the risk of retribution against themselves or their families by extreme rightwing elements of the armed forces. Some said they had already been warned not to talk. Some said they would violate the confidences of others if they were to speak openly. None expressed faith in the protective capabilities of the United States. None wanted to leave El Salvador. And none expressed faith in the ability of the judicial system to convict high-ranking officers even with the evidence they could provide. As a result, I have an ongoing obligation to them and to their families not to identify them publicly and I will not violate that obligation.

Below is a summary of information about two central points that has been provided to the task force by these confidential sources, but which was not included specifically in previous reports:

THE EARLIER MEETING

1. According to these sources, the decision to murder the Jesuits was made at a small meeting of officers held at the Salvadoran Military School on the afternoon prior to the murders (November 15, 1989). Among those present were Col. Benavides, commander of the military school; Gen. Juan Rafael Bustillo, then head of the Salvadoran Air Force (now assigned to the Salvadoran Embassy in Israel); Gen. Emilo Ponce, then Chief of Staff and now Minister of Defense; Gen. Orlando Zepeda, deputy Minister of Defense; and Col. Elena Fuentes, commander of the First Brigade. Reportedly, the initiative for the murders came from General Bustillo, while the reactions of the others ranged from support to reluctant acceptance to silence.

The direct and circumstantial evidence that was provided to the Task Force and that supports this version of events includes:

An allegedly eyewitness account of the meeting by an individual known to have been present at the military school on that afternoon;

Confirmation by another individual that the officers listed above were at the military school on the afternoon of November 15th;

The fact, now publicly reported, that the unit that carried out the murders was issued uniforms without insignias or other identifying characteristics late on the afternoon of November 15th;

The secret destruction, by military officers, of the logs indicating the identify of those who came and went from the military school that afternoon;

An allegation that the destruction of the logs was made known to Gen. Ponce in January, 1990, but that this information was not passed on by him to the then Minister of Defense. As a result, the Judge in the Jesuits' case did not learn that the logs had been destroyed until he made a specific request for them three months later;

A report that Col. Benavides told officers at the military school on the night of the 15th that he had "received the green light" to conduct an operation against the Jesuits. This implies that he did not make the decision himself;

A report that one of those present at the meeting with Col. Benavides later directly accused Gen. Ponce and the high command, in their presence, of being responsible for ordering the murders;

A report that Gen. Bustillo told senior Air Force officers, also on the night of November 15th, that a decision had been made to kill the Jesuit priests (citing specifically, Father Ellacuria, the best known of the priests); and

A report that Gen. Ponce told senior officers during a meeting on December 10, 1990 that "we would not be here if I had not made the decision that I did"; to which Gen. Bustillo responded "we have done well, but we must continue to take a hard line".

The account of the afternoon meeting at the military school described above might also explain the statement of a U.S. military officer assigned to the Embassy in San Salvador that he had been told by Salvadoran Col. Carlos Aviles, on the afternoon of November 15th, that "something was going to go down at the UCA" that night. The American officer subsequently told the FBI that he must have been wrong about hearing that statement because Col. Aviles was not in the country on November 15th. The fact is, however, that Col. Aviles returned to El Salvador on November 14th and might have known at least generally about a decision made the following afternoon to kill the Jesuits on the night of the 15th. At the time of the murders, Col. Aviles was serving as the chief of psychological operations on the staff of Gen. Ponce.

COVERUP

2. There is a substantial amount of circumstantial evidence, described in our earlier reports, to indicate the senior military officers in El Salvador must have known, soon after the murders, which unit was involved. This evidence pertains to the number of soldiers involved in carrying out the murders; the operational chain of command on the night of the murders; the close relation-

ship that exists among senior officers; the role of military intelligence in events immediately prior to, and subsequent to, the murders; the destruction of evidence at the military school and so on.

Just as an example, the Task Force interviewed one officer who claimed to have been told by a colleague on the day after the murders which unit had carried it out. The colleague had served in one of the units placed around the periphery of the UCA on the night the murders took place. When asked about the failure of officers with information to come forward, the officer told the Task Force that "in El Salvador, you talk until you find out the truth; but when you find out the truth, you shut up."

More specifically, the Task Force has not previously disclosed information provided to it that one of those later accused of the crimes reportedly confessed his involvement in the murders to his commanding officer in mid-December, 1989. That information was reportedly then passed on to General Ponce, but it was not turned over to those investigating the case.

I offer this information, as I say, to provide additional substantiation to statements made in earlier reports. Those statements concern, first, my view that it is possible—not certain, but very possible—that senior officers other than Col. Benavides ordered the murders. Based on all that I have learned about the Salvadoran armed forces, I personally find this version of events more credible than the alternative, which is that Col. Benavides acted on his own, notwithstanding the chain of command, and took upon himself the awesome responsibility for these crimes.

Second, the information contributes to my conviction that a coverup of the crimes was attempted and that this coverup involved officials at the highest levels. For reasons detailed in earlier reports, the coverup did not fully succeed because of (1) international pressure; (2) disclosures made by a U.S. military officer in early January, 1990; (3) President Cristiani's insistence that the military take responsibility for the crimes; and (4) good, preliminary police work carried out by El Salvador's Special Investigations Unit.

One additional point: the Task Force received information from a reliable Salvadoran source concerning threats made against the lives of several of the Salvadoran officials involved in pushing for progress in this investigation. One of those threats was directed against president Cristiani. There are also widespread suspicions in El Salvador about the deaths of three military officers connected with the Jesuits' case.

In part because of the threat of violence; in part because of the limited control exercised by civilian authorities over the military; and in part because both the U.S. and civilian authorities in El Salvador need to use the leverage they do have over the military to keep the peace process on track; I am under no illusion that the Government of El Salvador is likely to take further steps to investigate this case, or to examine seriously the possibility that top military officers ordered the crimes. I do recommend very strongly, however, that Congress and the Administration bear this information in mind when making further decisions with respect to U.S. policy in El Salvador. In this connection, I note that the information described above—as well as other information bearing on shortcomings in the investigation—is known to the Executive branch.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,438th day that Terry Anderson has been held captive in Lebanon.

But I am happy to note that today we have tremendous news. Thomas Sutherland and Terry Waite, the Anglican envoy sent nearly 5 years ago to negotiate Sutherland's release, are on their way home. And we hear that we may expect the remaining three Americans by months end.

More: In a televised interview, Terry Waite reported that his captors told him today that they "apologize" for capturing him and realize that there is nothing to be gained by holding men hostage. We, in the Senate, have oft asserted that hostage holding is an egregious violation of human rights and international law, but it is significant—and encouraging—that those in Lebanon who are responsible for this prolonged international tragedy have at long last recognized their error. Recognized their crime.

Mr. President, I ask unanimous consent that an Associated Press report relating the events of the day be printed in the RECORD at this point.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

KIDNAPERS RELEASE TWO WESTERN HOSTAGES; OTHERS MAY BE FREED SOON

(By Eileen Alt Powell)

DAMASCUS, SYRIA.—Shiite Muslim kidnapers freed hostages Terry Waite and Thomas Sutherland on Monday, and Waite said kidnapers told him they would release the last three American hostages in Lebanon by month's end.

Waite said educators Joseph Ciccipio and Alann Steen could be let go within the next five days and the third hostage, Terry Anderson, would join them by the end of November.

Anderson, chief Middle East correspondent of The Associated Press, is the longest held Western hostage. He was seized March 16, 1985. Sutherland, who spent most of his 6 years imprisoned with Anderson, said, "I couldn't have made it through captivity without him."

The two freed hostages, high-spirited and talkative, said they were celebrating their "first gulps" of fresh air and looked forward to meeting the sunshine.

The release of Sutherland, the American dean of agriculture at the American University of Beirut, and Waite, a Briton who was captured while trying to negotiate freedom for the other Westerners in Lebanon, was a dramatic advance toward ending the hostage ordeal.

The United Nations has been leading diplomatic efforts to gain freedom for Western hostages in Lebanon in exchange for the release of Arab detainees held by Israel a condition demanded by the kidnapers.

Sutherland, Waite and Anderson had been considered the most visible hostages, both because of the length of time they had been held and because of Waite's position as a special envoy of the Archbishop of Canterbury.

The release of Waite, 52, and Sutherland, 60, by the group Islamic Jihad, or Holy War, raised speculation that the Israelis may have made a commitment to free Sheik Abdul-Karim Obeid, their most valuable Shiite prisoner.

Waite said at a news conference in Damascus, Syria, that he had no news on two Germans also held hostage. At least one Italian is also among Western hostages in Lebanon.

U.N. Secretary-General Javier Perez de Cuellar said Monday that all Western hostages should be freed by Christmas.

Waite and Sutherland were released in Beirut and driven to the Syrian capital, where they were turned over to Western diplomats.

Following the news conference at the Syrian Foreign Ministry, Sutherland left at 12:45 a.m. Tuesday for Weisbaden, Germany, where he was to undergo medical tests. Waite was expected to fly to Cyprus and spend the night there before going on to Britain.

Waite and Sutherland were in high spirits. They said they had depended on each other for comfort and company, and described spending most of their captivity chained to a wall.

Waite said one captor came to tell them Monday afternoon they would be released. "He also said to me, 'We apologize for having captured you.' They recognize that now this was the wrong thing to do, that holding hostages achieves no useful, constructive purpose."

He also appealed to those "holding the people of South Lebanon, innocent people being held as hostages, to release them soon." Israel and its proxy force in the region, the South Lebanon Army, holds about 300 Arabs.

Sutherland, who wore a maroon sweater with a red carnation stuck in the front, said he and the others were "humbled" by learning over the past few months of the support the hostages had worldwide.

Of Anderson, Sutherland said: "He's a man who should have never been kidnaped" because he was just doing his job as a journalist.

The freed men also showed their sense of humor remained strong. Sutherland teased Waite about his role as a hostage negotiator for the Church of England.

"He came to get me out of there about five years ago . . . We're going to have to get some American technology to the Church of England and show them how to get things done a little bit faster."

Waite, wearing a brown and black sweater over a tan shirt, laughed frequently during the news conference. However, his eyes were puffy and bloodshot.

After the conference, he greeted Britons waiting for him. "I'm just a bit physically weak," he told them.

Sutherland's daughter Joan watched her father's news conference on an airport television in Portland, Ore., then boarded a plane to reunite with him.

"He looks wonderful!" she shrieked. "He looks just like he did before. I just can't believe how good he looks."

Sutherland's brother-in-law, David Murray, said in Ames, Iowa, "Seeing him gets right into the core of you. It's wonderful."

Waite, who had successfully negotiated the release of other Western detainees in Iran and Lebanon, came to Beirut in 1987 to try to free Americans held by the Iranian-allied Islamic Jihad. But he was kidnaped himself and held for nearly five years.

Sutherland was the hostage held the second-longest nearly 6 years.

Six longtime hostages three Americans and three Britons have been freed since August, when Perez de Cuellar took the lead in

negotiations. A Frenchman held for three days also was released.

Perez de Cuellar said the rest should be home in time for Christmas.

"That is what I have been offered by the (kidnap) groups, as well as by the Iranian government, which has always given me very strong support, as well as the Syrian government," he said.

Iran and Syria have pivotal roles in the hostage issue because Tehran backs the Shiite Muslim groups and Syria is the main power broker in Lebanon.

Israel and its allied Lebanese militia have freed 66 Arabs in exchange for the remains of one Israeli soldier who had been missing in Lebanon, and news on two others.

Israel welcomed Monday's releases and said it hoped for word on four other missing soldiers. The government statement made no mention of any future releases of Lebanese prisoners under Israeli control.

The news agency of Qatar, a Persian Gulf emirate, quoted an unidentified Islamic Jihad spokesman as saying his group "expects Israel to reciprocate by releasing another batch of Arab prisoners," including Obeid, who was seized in 1989 in southern Lebanon.

"If Israel reciprocates, then the case of the Western hostages would be resolved altogether," the agency quoted the spokesman as saying in Beirut.

In Los Angeles, Israeli Prime Minister Yitzhak Shamir said he was "very upset and very disappointed" about efforts to find information on the missing Israelis.

Waite was special envoy for the Archbishop of Canterbury when he dropped from sight on Jan. 20, 1987 in Beirut. His disappearance was especially shocking because he had been shuttling in and out of the Middle East for years, working to free captives.

Sutherland, dean of agriculture at the American University in Beirut, was kidnaped June 9, 1985, when gunmen attacked his car as he drove in a convoy from Beirut airport. The Scottish-born Sutherland lived in Colorado.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a nomination which was referred to the Committee on Foreign Relations.

(The nomination received today is printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 7:06 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, each without amendment:

S. 1568. An act to amend the Act incorporating the American Legion so as to redefine eligibility for membership therein; and

S. 1720. An act to amend Public Law 93-531 (25 U.S.C. 640d et seq) to reauthorize appropriations for the Navajo-Hopi Relocation Housing Program for fiscal years 1992, 1993, 1994, and 1995.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2100) to authorize appropriations for fiscal years 1992 and 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal years for the Armed Forces, and for other purposes.

The message further announced that the House has passed the bill (S. 5) to grant employees family and temporary medical leave under certain circumstances, and for other purposes; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 525. An act to amend the Federal charter for the Boy's Clubs of America to reflect the change of the name of the organization to the Boys and Girls Clubs of America;

H.R. 1304. An act to amend the Communications Act of 1934 to regulate the use of telephones in making commercial solicitations;

H.R. 1612. An act to amend section 108 of title 17, United States Code, to eliminate the library reproduction reporting requirement;

H.R. 1760. An act to amend the AMVETS charter;

H.R. 2324. An act to amend title 28, United States Code, with respect to witness fees;

H.R. 3394. An act to amend the Indian Self-Determination and Education Assistance Act; and

H.R. 3728. An act to provide for a 6-month extension of the Commission on the Bicentennial of the Constitution.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 525. An act to amend the Federal charter for the Boy's Clubs of America to reflect the change of the name of the organization to the Boys and Girls Clubs of America; to the Committee on the Judiciary.

H.R. 1304. An act to amend the Communications Act of 1934 to regulate the use of telephones in making commercial solicitations; to the Committee on Commerce, Science, and Transportation.

H.R. 1612. An act to amend section 108 of title 17, United States Code, to eliminate the library reproduction reporting requirement; to the Committee on the Judiciary.

H.R. 1760. An act to amend the AMVETS charter; to the Committee on the Judiciary.

H.R. 2324. An act to amend title 28, United States Code, with respect to witness fees; to the Committee on the Judiciary.

H.R. 3728. An act to provide for a 6-month extension of the Commission on the Bicentennial of the Constitution; to the Committee on the Judiciary.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, November 18, 1991, he had presented to the President of the United States the following enrolled bill:

S. 374. An act to settle all claims of the Aroostock Band of Micmacs resulting from the Band's omission from the Maine Indian Claims Settlement Act of 1980, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2133. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on appropriations legislation; to the Committee on the Budget.

EC-2134. A communication from the Administrator of the Department of Transportation, transmitting, pursuant to law, a report on the Federal Aviation Administration's schedule for implementation of new facilities of manned auxiliary flight service stations; to the Committee on Commerce, Science, and Transportation.

EC-2135. A communication from the United States Consumer Product Safety Commission, transmitting, pursuant to law, a report on the status of the study of aversive agents; to the Committee on Commerce, Science, and Transportation.

EC-2136. A communication from the Secretary of Energy, transmitting, pursuant to law, a report for Fiscal Year 1990 on Federal Government Energy Management and Conservation Programs; to the Committee on Energy and Natural Resources.

EC-2137. A communication from the Secretary of the Interior, transmitting, pursuant to law, a report addressing the progress that has been made during fiscal year 1990 on the establishment of an oil and gas leasing program for the non-North Slope Federal Lands; to the Committee on Energy and Natural Resources.

EC-2138. A communication from the Acting Deputy Associate Director for Collection and Disbursement, Minerals Managment Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-2139. A communication from the Acting Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-2140. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, a copy of a prospectus for the leasing of space for the Consumer Product Safety Commission in Montgomery County, Maryland; to the Committee on Environment and Public Works.

EC-2141. A communication from the Inspector General, Department of Defense, transmitting, pursuant to law, a report on the annual financial audit of the uses of the

Superfund; to the Committee on Environment and Public Works.

EC–2142. A communication from the Assistant Secretary for Finance and Administration of the Smithsonian Institute, transmitting, pursuant to law, the annual pension report for the Smithsonian Institution, the Woodrow Wilson International Center for Scholars, and Reading is Fundamental; to the Committee on Governmental Affairs.

EC–2143. A communication from the Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report of the mandated Superfund audit activities of the Inspector General of the Environmental Protection Agency for fiscal year 1990; to the Committee on Environment and Public Works.

EC–2144. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the study of the costs of furnishing, and payments for, portable x-ray services under Title XVIII of the Social Security Act; to the Committee on Finance.

EC–2145. A communication from the Acting Chairman of the United States International Trade Commission, transmitting, pursuant to law, a report entitled the Sixty-seventh quarterly report on Trade Between the United States and the Nonmarket Economy countries During January–June 1991; to the Committee on Finance.

EC–2146. A communication from the Chief Counsel, Foreign Claims Settlement Commission of the United States, Department of Justice, transmitting, pursuant to law, a report entitled the Foreign Claims Settlement Commission's Annual Report to Congress for 1990; to the Committee on Foreign Relations.

EC–2147. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements other than treaties entered into by the United States in the sixty day period prior to November 7, 1991; to the Committee on Foreign Relations.

EC–2148. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D. C. Act 9–97 adopted by the Council on November 5, 1991; to the Committee on Governmental Affairs.

EC–2149. A communication from the Chief of the Insurance and Pension Administration Division, Army and Air Force Exchange Service, transmitting, pursuant to law, reports for the plan year ended 31 December 1990; to the Committee on Governmental Affairs.

EC–2150. A communication from the Chairman of the Administrative Conference of the United States, transmitting, pursuant to law, a report on the status of the Fiscal Year 1991 Inspector General Annual Report; to the Committee on Governmental Affairs.

EC–2151. A communication from the Chairman of the National Credit Union Administration, transmitting, pursuant to law, a report entitled the National Credit Union Administration's Inspector General's Semiannual Report for the period from April 1, 1991 through September 30, 1991; to the Committee on Governmental Affairs.

EC–2152. A communication from the Chairman of the United States Merit Systems Protection Board, transmitting, pursuant to law, a report examining the significant actions taken by the United States Office of Personnel Management in providing leadership to some of the Government's human resource management programs; to the Committee on Governmental Affairs.

EC–2153. A communication from the Chairman of the United States Nuclear Waste Technical Review Board, transmitting, pursuant to law, a report on a reimbursable agreement with the General Services Administration for administrative support services; to the Committee on Governmental Affairs.

EC–2154. A communication from the Federal Inspector of the Alaska Natural Gas Transportation System, transmitting, pursuant to law, a report concerning the adequacy of internal controls and financial systems; to the Committee on Governmental Affairs.

EC–2155. A communication from the Director of Selective Service, transmitting, pursuant to law, a report on audits completed during fiscal year 1991; to the Committee on Governmental Affairs.

EC–2156. A communication from the General Counsel of the Department of the Treasury, transmitting, a draft of proposed legislation to authorize the Secretary of the Treasury to issue regulations to require that wages and salaries of Federal employees be paid by electronic funds transfer or any other method determined by the Secretary to be in the interest of economy or effectiveness, with sufficient safeguards over the control of, and accounting for, public funds; to the Committee on Governmental Affairs.

EC–2157. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled reports and testimony: September 1991; to the Committee on Governmental Affairs.

EC–2158. A communication from the Assistant Director for Administration of the National Science Foundation, transmitting, pursuant to law, a report on altered NSF systems of records; to the Committee on Governmental Affairs.

EC–2159. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on Tier III Federal Agency Drug-Free Workplaces Programs; to the Committee on Governmental Affairs.

EC–2160. A communication from the Assistant Attorney General, Department of Justice, transmitting, a draft of proposed legislation to make a technical amendment to the False Claims Act; to the Committee on the Judiciary.

EC–2161. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report of federal programs that provide services for fund grants, contracts, or cooperative agreements for families whose children are at risk of out of home placement and child abuse that may be associated with homelessness; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 1571. A bill to amend the Federal Railroad Safety Act of 1970 to improve railroad safety, and for other purposes (Rept. No. 102–219).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. ROTH (by request):

S. 1981. A bill to extend authorization of appropriations for the U.S. Office of Special Counsel, and for other purposes; to the Committee on Governmental Affairs.

By Mr. METZENBAUM:

S. 1982. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish protections against illegal activities involving drugs and devices, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. D'AMATO:

S. 1983. A bill to delay the implementation of a regulation to prohibit the use of voluntary contributions and provider-specific taxes by States to receive Federal matching funds under Medicaid; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read and referred (or acted upon), as indicated:

By Mr. COATS:

S. Res. 221. Resolution to establish a procedure for the appointment of independent counsels to investigate ethics violations in the Senate, transfer to the Committee on Rules and Administration the remaining authority of the Select Committee on Ethics, and abolish the Select Committee on Ethics; to the Committee on Rules and Administration.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ROTH (by request):

S. 1981. A bill to extend authorization of appropriations for the U.S. Office of Special Counsel, and for other purposes; to the Committee on Governmental Affairs.

U.S. OFFICE OF SPECIAL COUNSEL AUTHORIZATION ACT

• Mr. ROTH. Mr. President, I rise to introduce, by request, legislation to reauthorize the Office of Special Counsel for 5 years. As the ranking member of the Committee on Governmental Affairs which has oversight responsibilities for the Office of Special Counsel, it is my hope that the committee will consider this reauthorization in the near future.

The Office of Special Counsel serves a central function in the administration of Federal personnel law. Since its inception in 1979, the Special Counsel has been given greater and greater responsibility. The Special Counsel provides protection for Federal employees by investigating allegations of prohibited personnel practices within the Federal Government and allegations of activities prohibited by civil service laws, rules, and regulations. In addition, the Special Counsel is responsible for the interpretation and enforcement of the Hatch Act.

The Office of Special Counsel was established on January 1, 1979 by Executive order by President Carter. The Civil Service Reform Act of 1978 expanded the Special Counsel's functions

and powers. Under the 1978 act, the Special Counsel operated as the autonomous investigative and prosecutive arm of the Merit Systems Protection Board. Ten years later, the Whistleblower Protection Act established the Office of Special Counsel as an independent agency within the executive branch. The Office of Special Counsel continues to investigate and prosecute matters before the Merit Systems Protection Board.

A principal function of the Office of Special Counsel is the investigation of complaints of alleged prohibited personnel practices, including those activities covered by the Whistleblower Protection Act. The Whistleblower Protection Act is intended to protect Federal employees who report wrongdoing in the Federal Government.

In its fiscal year 1990 report to Congress, the Office of Special Counsel provided a representative sample of the actions initiated by the Office, including an investigation into a complaint from an employee who alleged that her removal was in retaliation for a letter of complaint to agency officials, and for her cooperation in an internal investigation of an agency official. The OSC confirmed her allegations through an independent investigation and at the OSC's request, the agency agreed to reinstate the complainant, restore all accumulated leave, retirement, and back pay; and purge all references to the removal from her personnel file. This is just one of many of the examples provided.

The Office of Special Counsel also provides a secure channel through which Federal employees may make disclosures of information evidencing violations of law, rule, regulation, waste of funds, mismanagement, abuse of authority, or a substantial danger to public health or safety, without the disclosure of the employees identity and without fear of retaliation.

The Office of Special Counsel is also responsible for providing guidance and enforcing the Hatch Act. Apart from investigating and prosecuting alleged violations of the Hatch Act, the Office of Special Counsel provides advisory opinions in response to employee questions and has published a helpful booklet explaining the coverage of the Hatch Act.

I am hopeful that my colleagues will understand the importance of the Office of Special Counsel and approve this legislation. With this reauthorization, the Senate will be reaffirming its commitment to the merit principles which serve as the basis for our civil service laws. I ask unanimous consent that a copy of a letter to Vice President DAN QUAYLE in his capacity as President of the Senate on this reauthorization be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. OFFICE OF SPECIAL COUNSEL,
Washington, DC, April 29, 1991.

Hon. J. DANFORTH QUAYLE,
President of the Senate,
U.S. Senate, Washington, DC.

DEAR MR. PRESIDENT: I am pleased to enclose for the consideration of Congress a proposed bill to extend authorization of appropriations for the U.S. Office of Special Counsel (OSC) for fiscal years 1993 through 1997.

Since 1979, the OSC has had the statutory responsibility to investigate allegations of prohibited personnel practices defined by law in the Civil Service Reform Act (CSRA) of 1978, as amended, and to initiate corrective and disciplinary actions when such remedial actions are warranted. The OSC is also responsible for the interpretation and enforcement of the Hatch Act provisions on political activity applicable to federal employees and certain state and local government employees. Finally, the OSC provides a secure channel through which federal employees may make disclosures of information evidencing wrongdoing in the federal government, without fear of retaliation.

Appropriations for the OSC are currently authorized only through fiscal year 1992. Enactment of the proposed bill will enable the OSC to continue its important work to assure the protection of the rights of federal employees, and the integrity of the merit system safeguards for those employees. We urge that this proposed bill receive prompt and favorable consideration.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this proposed bill to the Congress.

With respect,
MARY F. WIESEMAN,
Special Counsel.●

By Mr. METZENBAUM:

S. 1982. A bill to amend the Federal Food, Drug, and Cosmetic Act to establish protections against illegal activities involving drugs and devices, and for other purposes; to the Committee on Labor and Human Resources.

DRUG AND DEVICE ENFORCEMENT ACT

● Mr. METZENBAUM. Mr. President, I rise to introduce the Drug and Device Enforcement Act of 1990. This bill provides important new enforcement authority for the Food and Drug Administration in its regulation of drugs and medical devices.

Mr. President, the public, the Congress, the administration and the Food and Drug Administration have been terribly troubled by the scandal that occurred in the generic drug industry and by the involvement of several FDA employees. Thanks to the oversight work of Congressman JOHN DINGELL's oversight subcommittee, the scope of this scandal is known. The time has come to take the necessary legislative steps to assure that scandals of this type are not repeated at the FDA.

Unfortunately, scandals involving government procurement or grant or regulatory programs occur all too often. We only need look to recent episodes at the Pentagon and in our housing programs to see that white collar crime is not limited to certain industries or certain Government activities. Wherever the Government is lax and there are large sums of money to be made, as was the case with generic drugs, the Government must be vigilant.

Last year, the administration introduced legislation in the Senate that would have given FDA additional authority to "debar" individuals and companies for certain acts that compromise the FDA approval process. That bill was not limited to generic drugs because, as FDA said in June 1991, testimony in a House hearing, "although improprieties in the generic drug industry have taken center stage, fraud can be perpetrated by any company that FDA regulates."

I was encouraged by the administration's aggressiveness in seeking much needed legislation. I introduce this bill today to accomplish the same objectives of establishing strong deterrents to wrongful behavior and effective authority for assuring the integrity of the FDA regulatory process.

Mr. President, I am mindful that the House has recently passed similar debarment legislation that only covers human generic drugs. While legislation of that type is needed to restore consumer confidence in the FDA and generic drugs, I have no question that broader legislation, along the lines of the administration's bill, is called for.

The Drug and Device Enforcement Act of 1991 provides several new enforcement tools for the FDA in the regulation of all human and animal drugs and medical devices. To further explain the provisions of the bill, a summary will follow my statement. While I also am concerned with the need for similar authority in the regulation of food and cosmetic products, I have not included it at this time. There are significant differences in how FDA regulates food and cosmetic safety, so additional time may be needed before this bill is expanded to include these other FDA regulated products.

Mr. President, I ask unanimous consent that the bill and the summary of the bill be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1982

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Drug and Device Enforcement Act of 1991".

SEC. 2. SANCTIONS FOR ILLEGAL ACTIVITIES INVOLVING DRUGS AND DEVICES.

(a) SANCTIONS.—Chapter III of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331 et seq.) is amended—

(1) by inserting after the chapter designation the following:

"Subchapter A—Prohibitions and Remedies";

and

(2) by inserting after section 307 (21 U.S.C. 337) the following new subchapter:

"Subchapter B—Sanctions for Illegal Activities Involving Drugs and Devices

"SEC. 311. DEBARMENT.

"(a) MANDATORY DEBARMENT.—The Secretary shall debar an individual if the Secretary finds that the individual has been convicted of a felony under Federal law involving conduct relating to the development or approval or the process for development or approval of a product, or relating to the regulation of a product or activity subject to regulation by the Food and Drug Administration.

"(b) PERMISSIVE DEBARMENT.—

"(1) IN GENERAL.—The Secretary may, on the initiative of the Secretary or in response to a petition, debar an individual described in paragraph (2) or a person, other than an individual, described in paragraph (3). The Secretary may not initiate any action, or consider any petition, against an individual under this paragraph for an act described in subparagraph (B), (C), or (D) of paragraph (2) until any criminal investigation or criminal proceeding against such individual for such act is completed.

"(2) INDIVIDUALS SUBJECT TO PERMISSIVE DEBARMENT.—The following individuals are subject to debarment under paragraph (1):

"(A) CONVICTION RELATED TO A REGULATED PRODUCT OR ACTIVITY.—An individual that the Secretary finds has been convicted of—

"(i) a criminal offense—

"(I) that is a misdemeanor under Federal law or a felony under State law; and

"(II) involving conduct relating to the development or approval or the process for development or approval of a product, or the regulation, under Federal or State law, of a product or activity subject to regulation by the Food and Drug Administration;

"(ii) conspiracy to commit such a criminal offense; or

"(iii) aiding and abetting such a criminal offense.

"(B) FALSE STATEMENT OR REPRESENTATION.—An individual whom the Secretary finds knowingly makes, or causes to be made, to an officer, employee, or agent of the Department, a false statement or representation with respect to a material fact relating to a product or activity subject to regulation by the Food and Drug Administration.

"(C) FAILURE TO MAKE A REQUIRED DISCLOSURE.—An individual whom the Secretary finds knowingly fails to disclose, to an officer, employee, or agent of the Department, a material fact that the person has an obligation under this Act to disclose relating to a product or activity subject to regulation by the Food and Drug Administration.

"(D) INDIVIDUALS WITH KNOWLEDGE.—An individual, if the Secretary finds that the individual—

"(i) works for, or in consultation with, the same person as a second individual, during the period that the second individual is taking actions that later result in the debarment of the second individual under this section;

"(ii) knows of the actions of the second individual; and

"(iii) does not report the actions to an officer, employee, or agent of the Department or to an appropriate law enforcement official.

"(3) PERSONS SUBJECT TO PERMISSIVE DEBARMENT.—A person, other than an individual, is subject to debarment under paragraph (1) if the Secretary finds that—

"(A) the person employs, retains as a consultant or contractor, or otherwise uses the services in any capacity of, an individual during the period that the individual is taking actions that later result in the debarment of the individual under this section;

"(B) a significant number of the directors or managers of the person know of the actions of the individual; and

"(C) the person does not report the actions to an officer, employee, or agent of the Department.

"(c) EFFECT OF DEBARMENT.—

"(1) SANCTION.—

"(A) APPLICATION.—The Secretary shall not accept, review, or approve an application from a person debarred by the Secretary under subsection (a) or (b), during the period of debarment described in paragraph (3).

"(B) CIVIL PENALTY.—The Secretary shall, if the Secretary makes the finding described in paragraph (6) or (7) of section 314(a), assess the civil penalty described in section 314.

"(2) PUBLIC HEALTH WAIVER.—The Secretary may, on the initiative of the Secretary or in response to a petition, waive the sanction under paragraph (1)(A) with respect to an application if the Secretary finds that the waiver is necessary to promote the public health. The Secretary shall act on a petition seeking action under this paragraph not later than 180 days after the date the petition is submitted to the Secretary.

"(3) DEBARMENT PERIODS.—

"(A) MANDATORY DEBARMENT.—The debarment of an individual under subsection (a) shall be permanent.

"(B) PERMISSIVE DEBARMENT OF INDIVIDUALS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the period of debarment of an individual debarred under subsection (b)(2) shall be not more than 5 years.

"(ii) SUBSEQUENT DEBARMENT.—If an individual who has been debarred under subsection (b)(2) commits an act that leads to a subsequent debarment not later than 10 years after the initial debarment, the period of debarment of the individual shall be permanent.

"(C) PERMISSIVE DEBARMENT OF PERSONS OTHER THAN INDIVIDUALS.—Except as provided in clause (ii), the period of debarment of a person debarred under subsection (b)(3) shall be not more than 3 years.

"(D) DEBARMENT FOR MULTIPLE OFFENSES.—The Secretary may determine whether debarment periods shall run concurrently or consecutively in the case of a person debarred for multiple offenses.

"(4) CONSIDERATIONS.—In determining the appropriateness of a debarment of a person under subsection (b), the period of debarment under paragraph (3), or the appropriateness of a termination of a debarment of a person under subsection (d), the Secretary shall consider where applicable—

"(A) the nature and seriousness of an offense described in subsection (b) that is involved;

"(B) the nature and extent of management participation in the offense and whether corporate policies and practices encouraged the offense, including whether inadequate institutional controls contributed to the offense;

"(C) the nature and extent of voluntary steps to mitigate the impact on the public of the offense, including—

"(i) discontinuing distribution of the product involved;

"(ii) cooperating with an investigation;

"(iii) disclosing all wrongdoing to appropriate Government agencies in a timely manner;

"(iv) relinquishing profits on product approvals fraudulently obtained; and

"(v) taking actions to substantially limit potential or actual adverse effects on the public health that could result from the actions that provided the basis for debarment;

"(D) whether and the extent to which changes in ownership, management, or operations have remedied the causes of the offense and provided reasonable assurances that the offense will not occur in the future;

"(E) whether the person to be debarred is able to present adequate evidence that the current operations, and pending applications regarding products, of the person are free of fraud and of false statements with respect to material facts;

"(F) prior convictions under Federal or State law involving products or activities within the jurisdiction of the Food and Drug Administration; and

"(G) whether the person has fully investigated the circumstances of the cause for debarment and, if so, provided the results of the investigation to the Government.

"(d) APPLICATION FOR TERMINATION OF DEBARMENT.—

"(1) APPLICATION.—A person that is debarred under subsection (b) may apply to the Secretary, in the manner specified by the Secretary for termination of the debarment.

"(2) TERMINATION.—If the conviction for which a person has been debarred under subsection (a) or (b)(2)(A) is reversed, the Secretary determines that a finding made by the Secretary with respect to an offense described in paragraph (2) or (3) of subsection (b) is erroneous, or the Secretary determines, in accordance with the considerations described in subsection (c)(4), that termination of a debarment is appropriate, the Secretary shall, on the initiative of the Secretary or in response to an application submitted under paragraph (1), withdraw the order of debarment.

"(3) TIMING.—The decision of the Secretary whether to terminate a debarment under this subsection shall be made not later than 180 days after the date the Secretary receives an application under paragraph (1).

"(e) PUBLICATION AND LIST OF DEBARRED PERSONS.—The Secretary shall publish in the Federal Register the name of any person debarred under subsection (a) or (b), the effective date of the debarment, and the period of the debarment. The Secretary shall also maintain and make available to the public a list, updated no less often than quarterly, of the persons, the effective dates and minimum periods of the debarments, and the termination of the debarments.

"(f) REPORTING TO SECRETARY OF EVENTS SUBJECT TO DEBARMENT OR SANCTION.—A person that files with the Secretary an application for approval of a product by the Food and Drug Administration shall report to the Secretary, during the period in which the person has a pending or approved application—

"(1) to the extent and at such intervals as the Secretary may require, such information as the Secretary may find necessary to enable the Secretary to determine whether the person has used, in any capacity that would subject the person to sanctions under subsection (c), the services of a debarred person; and

"(2) not later than 30 days after the date the person gains knowledge of information that could subject the person to sanctions under subsection (c), the information.

"SEC. 312. TEMPORARY DENIAL OF APPROVAL.

"(a) AUTHORITY.—

"(1) IN GENERAL.—The Secretary may, on the initiative of the Secretary or in response to a petition, issue an order refusing, for the period prescribed by subsection (b), to approve an application submitted by a person if the Secretary determines that—

"(A) there is substantial basis to believe that the person—

"(i) has bribed or attempted to bribe, has paid or attempted to pay an illegal gratuity to, or has induced or attempted to induce another person to bribe or pay an illegal gratuity to, an officer, employee, or agent of the Department or to any other Federal, State, or local official in connection with an application, or has conspired to commit, or aided or abetted, the bribery, payment, or inducement; or

"(ii) has knowingly made or caused to be made two or more false statements or misrepresentations with respect to material facts relating to an application to an officer, employee, or agent of the Department, or has conspired to commit, or aided or abetted, the making of such false statements or misrepresentations;

"(B) the action described in subparagraph (A) raises a significant question regarding the integrity of the approval process with respect to the application, the reliability of the data in the application or the reliability of the data concerning the application; and

"(C) the person is under an active Federal criminal investigation for the action described in clause (i) or (ii) of subparagraph (A).

"(2) PUBLIC HEALTH WAIVER.—The Secretary may, on the initiative of the Secretary or in response to a petition, waive refusal of approval under subsection (a) with respect to an application if the Secretary finds that the waiver is necessary to protect the public health. The Secretary shall act on a petition seeking action under this paragraph not later than 180 days after the date the petition is submitted to the Secretary.

"(b) PERIOD.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a denial of approval of an application of a person under subsection (a) shall be in effect for a period determined by the Secretary but not to exceed 18 months beginning on the date the Secretary makes the findings described in subsection (a) with respect to which the denial was made.

"(2) TERMINATION.—The Secretary shall, on the initiative of the Secretary or in response to a petition, terminate the denial if the Secretary finds that—

"(A) the investigation described in subsection (a)(1)(C) has ended and—

"(i) did not result in a criminal charge against the person described in subsection (a); or

"(ii) resulted in criminal charges that have been dismissed or on which a judgment of acquittal has been entered; or

"(B) a determination of the Secretary under subsection (a)(1) is erroneous.

"(3) INDICTMENT.—If, at the end of the period described in paragraph (1), the Secretary finds that the person has been criminally charged for an action described in clause (i) or (ii) of subsection (a)(1)(A), the Secretary may extend the period of denial of approval of an application for a period not to exceed 18 months. The Secretary shall terminate the extension if the Secretary finds that the charges have been dismissed or that a judgment of acquittal has been entered on the charges.

"(c) INFORMAL HEARING.—

"(1) REFUSAL OF APPROVAL.—Not later than 10 days after the date of the service of the order described in subsection (a) on a person described in subsection (a), the Secretary shall provide the person with an opportunity for an informal hearing on the decision of the Secretary. Not later than 60 days after the date on which the hearing is held, the Secretary shall notify the person given the hearing whether the refusal of approval will be continued, terminated, or otherwise modified. The notification shall be a final agency action.

"(2) TERMINATION OR EXTENSION.—Not later than 10 days after the date the Secretary provides notice of a finding under paragraph (2) or (3) of subsection (b) to a person, and before taking action under the subsection, the Secretary shall provide the person with an opportunity for an informal hearing on the decision of the Secretary. Not later than 60 days after the date on which the hearing is held, the Secretary shall notify the person given the hearing whether the termination or extension at issue in the hearing will be continued, terminated, or otherwise modified. The notification shall be a final agency action.

"SEC. 313. TEMPORARY SUSPENSION OF MARKETING.

"(a) AUTHORITY.—

"(1) IN GENERAL.—The Secretary may issue an order suspending the distribution of all products described in paragraph (2) that were approved under applications of a person, if the Secretary finds that such person—

"(A)(i) has engaged in actions, in connection with the development, approval, manufacturing, or distribution of such a product, that—

"(I) are described in clause (i) or (ii) of section 312(a)(1)(A); and

"(II) the Secretary has reason to believe materially influenced the approval of the product, or the compliance of the product with the applicable requirements of the Food and Drug Administration, with regard to the safety and efficacy of the product; or

"(ii) has engaged in flagrant and repeated violations of good manufacturing practice or good laboratory practice, in connection with the development, manufacturing, or distribution of such a product, that—

"(I) the Secretary has reason to believe materially affect the safety or efficacy of the product; and

"(II) have not been remedied within a reasonable period of time following notice of such violations by the Food and Drug Administration; and

"(B) is under an active investigation by a Federal authority in connection with a civil or criminal proceeding involving the action described in subparagraph (A)(i) or the violation described in subparagraph (A)(ii).

"(2) COVERED PRODUCTS.—The products covered under paragraph (1) are products—

"(A) for which a person has obtained an approval as described in section 317(4)(A) (only with respect to new drugs covered by section 505(j)), or in subparagraph (D) or (E) of section 317(4); and

"(B) for which the Secretary has reason to believe that the development, approval, manufacturing, or distribution was materially affected by the actions described in paragraph (1)(A)(i) and the violations described in paragraph (1)(A)(ii).

"(3) PUBLIC HEALTH WAIVER.—The Secretary may, on the initiative of the Secretary or in response to a petition, waive the suspension under paragraph (1) with respect to a product if the Secretary finds that the waiver is necessary to protect the public health. The Secretary shall act on a petition seeking action under this paragraph not later than 180 days after the date the petition is submitted to the Secretary.

"(b) PERIOD.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a suspension under subsection (a) shall be in effect for a period determined by the Secretary but not to exceed 18 months beginning on the date the Secretary makes the findings described in subsection (a) with respect to which the suspension was made.

"(2) TERMINATION.—The Secretary shall, on the initiative of the Secretary or in response to a petition, withdraw the order of suspension if the Secretary finds that—

"(A) the criminal investigation described in subsection (a)(1)(B) has ended and—

"(i) did not result in a criminal charge against the person; or

"(ii) resulted in criminal charges that have been dismissed or on which a judgment of acquittal has been entered; or

"(B) a finding of the Secretary made under subsection (a)(1) is erroneous; or

"(C) the person with respect to whom the order was issued demonstrates—

"(i) on the basis of an audit by the Food and Drug Administration or by experts acceptable to the Food and Drug Administration, or on the basis of other information, that the development, approval manufacturing, and distribution of such product is in substantial compliance with the applicable requirements of this Act, and

"(ii) changes in ownership, management, or operations—

"(I) fully remedy the patterns or practices with respect to which the order was issued; and

"(II) provide reasonable assurances that such actions will not occur in the future.

"(3) INDICTMENT.—If, at the end of the period described in paragraph (1), the Secretary finds that a person has been criminally charged for an action described in subsection (a)(1)(A)(i) or a violation described in subsection (a)(1)(A)(ii), the Secretary may extend the period of suspension for a period not to exceed 18 months. The Secretary shall, on the initiative of the Secretary or in response to a petition, terminate the extension if the Secretary finds that the charges have been dismissed or that a judgment of acquittal has been entered on the charges.

"(4) ACTION.—The Secretary shall act on a petition described in paragraph (2) or (3) not later than 180 days after the date of the petition. The Secretary may consider a petition described in paragraph (2) concurrently with the proceeding to issue the order of suspension under subsection (a), and shall not issue the order if the Secretary makes the finding described in paragraph (2).

"SEC. 314. CIVIL PENALTIES.

"(a) IN GENERAL.—A person shall be liable to the United States for a civil penalty for each violation described in paragraphs (1) through (7) in an amount not to exceed $250,000 in the case of an individual and not to exceed $1,000,000 in the case of a person other than an individual, if the Secretary finds that the person—

"(1) knowingly makes or causes to be made, to an officer, employee, or agent of the Department, a false statement or misrepresentation with relation to a material fact in connection with an application regarding a product;

"(2) bribes or attempts to bribe or pays or attempts to pay an illegal gratuity to an officer, employee, or agent of the Department in connection with an application regarding a product;

"(3) destroys, alters, removes, secretes, or procures the destruction, alteration, removal, or secretion of, a material document or other material evidence that is the property of or in the possession of the Department for the purpose of interfering with the discharge of the responsibilities of the Department in connection with an application regarding a product;

"(4) knowingly fails to disclose, to an officer, employee, or agent of the Department, a material fact that the person has an obligation under this Act to disclose relating to a product;

"(5) knowingly obstructs an investigation of the Department regarding a product;

"(6) is a person that has any approved or any pending application regarding a product and knowingly employs, retains as a consultant or contractor, or otherwise uses in any capacity the services of an individual during the period that the individual is debarred under section 311; or

"(7) is an individual debarred under section 311 and, during the period of debarment, provides services in any capacity to a person that has any approved or any pending application regarding a product.

"(b) PROCEDURE.—

"(1) AMOUNT.—In determining the amount of a civil penalty under this section, the Secretary shall take into account the nature, circumstances, extent, and gravity of the act subject to penalty, the ability of the person to pay, the effect on the ability of the person to continue to do business, any history of prior similar acts, and such other matters as justice may require.

"(2) LIMITATION ON ACTIONS.—The Secretary may not initiate an action under this subsection—

"(A) with respect to an act described in subsection (a) that occurred earlier than the date of the enactment of this Act;

"(B) later than 6 years after the date when facts material to the act were known or reasonably should have been known by the Secretary; or

"(C) later than 10 years after the date on which the act occurred.

"(c) INFORMANTS.—

"(1) AMOUNT OF AWARD.—The Secretary may award to an individual (other than an officer, employee, or agent of the Federal Government) who provides information leading to the imposition of a civil penalty under this section an amount equal to the lesser of—

"(A) $250,000; or

"(B) one-half of the penalty imposed and collected.

"(2) REVIEWABILITY.—The decision of the Secretary on such award shall not be reviewable.

"(3) PARTICIPATION.—An individual shall not be eligible for such an award if such individual knowingly participated in the violation described in subsection (a).

"SEC. 315. PROCEDURE.

"(a) IN GENERAL.—The Secretary may not take an action under subsection (a), (b), or (c) of section 311, subsection (a) or (b) of section 313 or section 314(a) with respect to a person unless the Secretary has provided notice to the person and issued an order for the action made on the record after opportunity for an agency hearing on disputed issues of material fact, and in the case of an action under section 314, on the amount of the penalty.

"(b) PROCEDURE AND SANCTIONS IN CONNECTION WITH CONDUCT OF HEARING OR INVESTIGATION.—

"(1) IN GENERAL.—The Secretary may—

"(A) in the course of a hearing under this subsection or investigation, administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation; and

"(B) in the course of a hearing under this section, sanction a person, including a party or attorney, for failure to comply with an order or procedure, failure to defend an action, or other misconduct that would interfere with the speedy, orderly, or fair conduct of the hearing.

"(2) SANCTION.—A sanction administered under paragraph (1)(B) shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

"(A) in the case of refusal to provide or permit discovery with respect to a matter, drawing negative factual inferences or treating the refusal as an admission by deeming the matter, or certain facts, to be established;

"(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

"(C) striking pleadings, in whole or in part;

"(D) staying the proceedings;

"(E) dismissal of the action;

"(F) entering a default judgment;

"(G) ordering the party or attorney to pay attorney's fees and other costs caused by the failure or misconduct; and

"(H) refusing to consider a motion or another action that is not filed in a timely manner.

"SEC. 316. JUDICIAL REVIEW.

"A person that is the subject of an adverse decision under subsection (a), (b), or (c) of section 311, subsection (a) or (b) of section 312, subsection (a) or (b) of section 313 or section 314(a) may obtain a review of the decision by the United States Court of Appeals for the District of Columbia or for the circuit in which the person resides, by filing in the court (not later than 60 days after the date the person is notified of the decision of the Secretary) a petition requesting that the decision be modified or set aside.

"SEC. 317. DEFINITIONS.

"As used in this subchapter:

"(1) ACTIVITY.—The term 'activity' means an action related to a product.

"(2) ANTIBIOTIC DRUG.—The term 'antibiotic drug' has the meaning given the term in section 507.

"(3) APPLICATION OR APPLICATION FOR APPROVAL.—The terms 'application' and 'application for approval' include—

"(A) an application under subsection (b) or (j) of section 505 with respect to a new drug;

"(B) an application for certification under section 507 of an antibiotic drug;

"(C) an application under section 512(b) with respect to a new animal drug;

"(D) an application under section 512(m) with respect to a new animal drug;

"(E) a premarket notification under section 510(k) of an intent to introduce into interstate commerce for commercial distribution a device intended for human use;

"(F) an application for premarket approval under section 515 with respect to a class III device;

"(G) an application for licensing under section 351 of the Public Health Service Act with respect to a biological product (42 U.S.C. 262); or

"(H) an application under section 802(b) with respect to a drug.

"(4) APPROVAL.—The term 'approval' includes—

"(A) approval under subsection (b) or (j) of section 505 of an application with respect to a new drug;

"(B) certification under section 507 of an antibiotic drug;

"(C) approval under section 512(b) of an application with respect to a new animal drug;

"(D) approval under section 512(m) of an application with respect to a new animal drug;

"(E) a determination under section 510(k) of substantial equivalence to another device;

"(F) premarket approval under section 515 with respect to a class III device;

"(G) a license under section 351 of the Public Health Service Act with respect to a biological product; or

"(H) approval of an application under section 802(b) with respect to a drug.

"(5) BIOLOGICAL PRODUCT.—The term 'biological product' means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, analogous product, or arsphenamine, a derivative of arsphenamine, or any other trivalent organic arsenic compound.

"(6) CONVICTED.—A person is considered to have been 'convicted' of a criminal offense—

"(A) when a judgment of conviction has been entered against the person by a Federal or State court, regardless of whether an appeal is pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

"(B) when there has been a finding of guilt against the person by a Federal or State court;

"(C) when a plea of guilty or nolo contendere by the person has been accepted by a Federal or State court; or

"(D) when the person has entered into participation in a first offender, deferred adjudication, or other arrangement or program under which a judgment of conviction has been withheld.

"(7) DEVELOPMENT.—The term 'development', as used with respect to a product subject to approval by the Food and Drug Administration, includes all steps necessary to process or complete, and secure approval of, the application, including—

"(A) designing of protocols for, and conduct of, scientific, medical, engineering, and any other research, experimentation, testing, and analysis (including animal research and preclinical and clinical trials for the product or substance, or the precursors or component elements of the product or substance);

"(B) designing and testing of manufacturing controls and procedures for the product or substance;

"(C) designing and preparation of packaging and labeling for the product or substance; and

"(D) preparation of the application for approval, and of data or documentation supporting the application, and of any other data on which the application or approval of the application is based.

"(8) MANAGER.—The term 'manager' means, with respect to a person, an employee of the person who has duties of such responsibility that the conduct of the employee may fairly be assumed to represent the policy of the person.

"(9) KNOW; KNOWINGLY.—The terms 'know', and 'knowingly' mean that a person, with respect to information—

"(A) has actual knowledge of the information; or

"(B) acts in deliberate ignorance or reckless disregard of the truth or falsity of the information.

"(10) PRODUCT.—The term 'product' means a new drug, an antibiotic drug, a new animal drug, a device, or a biological product.".

(b) EFFECTIVE DATE.—Sections 311, 312, and 313 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a), shall apply to acts or omissions that occurred not more than 5 years prior to the date of the enactment of this Act.

SEC. 3. EFFECT ON OTHER LAWS.

No amendment made by this Act shall preclude any other civil, criminal, or administrative remedy provided under Federal or State law, including a private right of action against a person for the same act as is subject to an action or a penalty under an amendment made by this Act.

SUMMARY—DRUG AND DEVICE ENFORCEMENT ACT OF 1991

This bill amends the Federal Food, Drug, and Cosmetic Act (FFDCA) to establish protections against certain illegal activities involving drugs and devices subject to regulation by the Food and Drug Administration (FDA). These sanctions include debarment of both individuals and corporations from involvement with FDA regulated products, temporary denial of approval of product applications and temporary suspension of the distribution of FDA approved products during the investigation of violations of the FFDCA, and fines. The following is a summary of the bill.

Section 2.—Sanctions for Illegal Activities Involving Drugs and Devices.

I. SECTION 311—DEBARMENT

A. Types of Debarment.—Mandatory debarment of individuals and permissive debarment of individuals and corporations.

1. Mandatory Debarment—Subsection (a) provides for the mandatory debarment by the Secretary of Health and Human Services (HHS) of an individual, if the individual is:

Convicted of a felony under federal law,

For conduct relating to the development or approval of a product, the process for development or approval of a product, or the regulation of a product or activity regulated by the FDA.

2. Permissive Debarment—Subsection (b) provides for the permissive debarment by the Secretary of HHS of persons, which are defined by the FFDCA to include individuals, partnerships, corporations, and associations.

Permissive Debarment of Individuals is provided for:

An individual convicted of a misdemeanor under federal law or a felony under state law which involves conduct relating to the development or approval, the process for the development or approval, or the regulation under federal or state law of a product or activity regulated by the FDA;

An individual convicted of conspiracy to commit one of the above criminal offenses;

An individual convicted of aiding and abetting the commission of one of the above criminal offenses;

An individual whom the Secretary finds knowingly makes, or causes to be made to an HHS employee, a false statement of a material fact relating to an FDA regulated product or activity;

An individual whom the Secretary finds knowingly fails to disclose to an HHS employee, a material fact that the person had an obligation to disclose relating to an FDA regulated product or activity; or

An individual whom the Secretary finds works for, or in consultation with, a second individual during the period that the second individual is taking actions that later result in the debarment of the second individual; and the individual knows of the actions of the second individual; and the individual does not report these actions to HHS or an appropriate law enforcement official.

Permissive Debarment of Persons (other than individuals) is provided for: A person which employs, retains as a consultant or contractor, or otherwise uses the services of an individual during the period that the individual is taking actions that later result in the debarment of the individual; and a significant number of the directors or managers of the person known of the actions of the individual; and the person does not report these actions to HHS.

B. Procedure for Debarment—Agency Hearings and Judicial Review:

1. Agency Hearing (Sec. 315)—The Secretary may not debar an individual or a corporation unless the Secretary has provided notice to the person and issued an order for the action made on the record after opportunity for a formal agency hearing on disputed issues of material fact.

During the course of the hearing the Secretary may issue sanctions for misconduct that interferes with the conduct of the hearing.

2. Judicial Review (Section 316)—An individual or corporation that is the subject of an adverse debarment decision may obtain review of the decision by the U.S. Court of Appeals within 60 days after being notified of the Secretary's decision.

C. Effect of Debarment—Sanctions, Public Health Waiver, Time Periods, Considerations, Termination of Debarment, Publication of the Names of Debarred Persons, and Reporting Misconduct Which May Lead to Debarment.

1. Sanctions—There are two types of sanctions for debarment that the Secretary may impose. The first pertains to applications from the debarred party and the second involves fines.

The Application Sanction—The Secretary shall not accept, review, or approve an application from the debarred party.

Public Health Waiver—The Secretary may waive the application sanction after finding that such waiver is necessary to promote the public health.

Time Periods—The time periods during which the Secretary will not accept, review, or approve applications from debarred parties are as follows:

Mandatory debarment of individuals is permanent;

Permissive debarment of individuals for the first debarment is not to exceed 5 years; and for a subsequent debarment within 10 years after the initial debarment, the sanction is permanent;

Permissive debarment of persons (other than individuals) can be up to 3 years, depending on the underlying offense;

In the case of debarment for multiple offenses, the Secretary determines whether the debarment periods run concurrently or consecutively.

The Civil Fine Sanction (Section 314)—The Secretary shall assess an amount not to exceed $250,000 in the case of an individual and not to exceed $1,000,000 in the case of a person (other than an individual) if the Secretary finds that:

The individual has been debarred under section 311 and provides services in any capacity, during the period of debarment, to a person that has any approved or pending application regarding an FDA regulated product; or

The person has any approved or pending application regarding an FDA regulated product and knowingly employs, retains as a consultant or contractor, or otherwise uses in any capacity the services of an individual during the period that the individual is debarred.

2. Considerations—In considering the appropriateness of permissive debarment, the period of permissive debarment or the appropriateness of terminating permissive debarment, the Secretary shall consider where applicable:

The gravity of the underlying offense;

The extent of management participation in the offense;

Voluntary steps to mitigate the impact of the offense on the public;

Whether changes in management have remedied the causes of the offense and provide some assurance that the offense will not occur in the future;

Evidence that current operations or pending applications are free of fraud and false statements of material facts;

Prior convictions involving products and activities regulated by FDA; and

Whether the person has fully investigated the circumstances of the cause of debarment and has provided the results of the investigation to the government.

3. Termination of Debarment—An individual or corporation that has been permissively debarred may apply to the Secretary for termination of the debarment in a manner to be specified in HHS regulations. The debarment will terminate if the conviction on which the debarment is based is reversed, or the Secretary determines that a finding made by the Secretary with respect to an offense that was the basis of the debarment is erroneous, or the Secretary determines that termination of the debarment is appropriate.

4. Publication—The Secretary shall both publish in the Federal Register and make available to the public the name of any debarred individual or corporation, the effective date of debarment, the period of debarment, and the termination of debarment.

5. Reporting Requirement—A person that files an application for FDA approval of a product shall report to the Secretary during the period in which the person has an approved or pending application such information as the Secretary determines to be necessary to enable the Secretary to determine whether the person has used the services of a debarred individual.

II. SECTION 312—TEMPORARY DENIAL OF APPROVAL

A. Basis—The Secretary may issue an order refusing to approve an application if the Secretary finds:

There is substantial basis to believe the person has bribed or attempted to bribe, paid or attempted to pay an illegal gratuity to, or induced or attempted to induce another to bribe or pay an illegal gratuity to a federal, state, or local official in connection with an application; or the person has knowingly made or caused to be made two or more false statements with respect to material facts relating to an application; and

Those actions raise a significant question about the integrity of the approval process or the reliability of the data supporting the application; and

The person is under a federal criminal investigation for those actions.

B. Time Period—The period of refusal of approval of an application shall not exceed 18 months. The refusal of approval will terminate if the relevant investigation did not result in criminal charges, or the resulting criminal charges were dismissed, or the Secretary determines there was error. If at the end of the period of refusal of approval the person has been charged with a relevant criminal act, the Secretary may extend the period of refusal of approval for a period up to 18 months.

C. Procedure (Sections 312 and 316) and Public Health Waiver—Within 10 days of the order refusing to approve an application, the person shall be afforded the opportunity for

an informal hearing on the order. The person is also afforded the opportunity for an informal hearing before termination or extension of the denial of approval is imposed. This agency decision is reviewable by the U.S. Court of Appeals.

The Secretary may also waive refusal of approval of an application after finding that the waiver is necessary to protect the public health.

III. SECTION 313.—TEMPORARY SUSPENSION OF MARKETING

A. Basis—The Secretary may issue an order suspending the distribution of certain covered products approved under the application of a person if the Secretary finds that such person:

Has bribed or attempted to bribe, paid or attempted to pay an illegal gratuity to, or induced or attempted to induce another bribe or pay an illegal gratuity to a federal, state, or local official in connection with an application; or has knowingly made or caused to be made two or more false statements with respect to material facts relating to an application; and the Secretary has reason to believe such actions materially influenced the approval of a product or the compliance of a product with FDA requirements; or

Has engaged in flagrant and repeated violations of good manufacturing or laboratory practices that the Secretary has reason to believe materially affected the safety or efficacy of the product and these violations have not been remedied promptly following notice by the FDA; and

The person is under civil or criminal investigation by a federal authority for those actions.

B. Time Period—The period of suspension of the distribution of a product shall not exceed 18 months. The suspension will terminate if the relevant investigation did not result in criminal charges, or the resulting criminal charges have been dismissed, or the Secretary determines there was error, or the person demonstrates that the product is in compliance and the problems are remedied. If at the end of the period of suspension the person has been charged with a relevant criminal act, the Secretary may extend the period of suspension for a period up to 18 months.

C. Procedure (Section 315 and 316) and Public Health Waiver—The Secretary may not suspend the distribution of a covered product unless the Secretary has provided notice to the person and issued an order for the action made on the record after opportunity for a formal agency hearing on disputed issues of material fact. During the course of the hearing the Secretary may issue sanctions for misconduct that interferes with the conduct of the hearing. A person that is the subject of an adverse decision may obtain review of the decision by the U.S. Court of Appeals within 60 days after being notified of the Secretary's decision.

D. Covered Products—The products covered by this section are human generic drugs, animal generic drugs and devices determined to be substantially equivalent under section 510(k) of the FFDCA.

The Secretary may waive the suspension of the distribution of a product if the Secretary finds the waiver is necessary to protect the public health.

IV. SECTION 314—CIVIL PENALTIES

A. Basis—The Secretary shall assess an amount not to exceed $250,000 in the case of an individual and not to exceed $1,000,000 in the case of a person (other than an individual) if the Secretary finds that the individual or person:

Knowingly makes or causes to be made to a Department of HHS employee, a false statement with relation to a material fact in connection with an application;

Bribes or attempts to bribe or pays or attempts to pay an illegal gratuity to a HHS employee in connection with an application;

Destroys, alters, removes, secretes, or procures the destruction, alteration, removal, or secretion of material evidence that is in the possession of HHS for the purpose of interfering with an application;

Knowingly fails to disclose to HHS a material fact that the person has an obligation to disclose;

Knowingly obstructs an investigation of HHS;

Is a person that has any approved or pending application regarding an FDA regulated product and knowingly employs, retains as a consultant or contractor, or otherwise uses in any capacity the services of an individual during the period that the individual is debarred; or

Is an individual who has been debarred and who during the period of debarment provides services in any capacity to a person that has any approved or pending application regarding an FDA regulated product.

B. Procedure (Sections 315 and 316)—The Secretary may not impose these fines unless the person has had the opportunity for an agency hearing on disputed issues of material fact and the amount of the penalty. The Secretary shall also consider the gravity of the underlying act, the ability of the person to pay and continue to do business, and prior similar acts before imposing such fines. This agency decision is reviewable by the U.S. Court of Appeals.

C. Limitation on Actions—The Secretary may not impose these fines if the underlying act occurred before the date of enactment of this bill; if the imposition of the fine would be later than 6 years after the date when facts material to the underlying act were or should have been known to the Secretary; or if the imposition of the fine would be later than 10 years after the act occurred.

D. Informants—The Secretary may award to an individual (other than an employee of the federal government or an individual who knowingly participated in the violation) who provides information leading to the imposition of a civil penalty under this section, an amount equal to the lesser of $250,000 or one-half of the penalty imposed and collected.

V. SECTION 317—DEFINITIONS AND EFFECTIVE DATE

A. Application—The term includes applications for new drugs under section 505; antibiotics under section 507; new animal drugs under section 512; biological products under section 351 of the Public Health Service Act; drugs under section 802(b); and devices under sections 510(k) and 515.

B. Approval—The term includes all products listed in paragraph A above.

C. Know; Knowingly—The terms mean that a person, with respect to information (A) has actual knowledge of the information; or (B) acts in deliberate ignorance or reckless disregard of the truth or falsity of the information.

D. Product—The term means drugs, new drugs, antibiotic drugs, new animal drugs; biological products; and devices.

E. Effective Date—Section 311, 312 and 313 apply to acts or omissions that occurred not more than 5 years prior to the date of the enactment of this Act.•

By Mr. D'AMATO:

S. 1983. A bill to delay the implementation of a regulation to prohibit the use of voluntary contributions and provider-specific taxes by States to receive Federal matching funds under Medicaid; to the Committee on Finance.

MEDICAID MORATORIUM ACT OF 1991

• Mr. D'AMATO. Mr. President, I rise today to introduce legislation that will allow the administration and the States to move forward toward an agreement on the difficult issue of provider-specific taxes and their treatment under the Medicaid Program.

As my colleagues are well aware, the Health Care Financing Administration, on September 12, issued a regulation prohibiting the use of a broad range of revenues currently applied toward Medicaid by State governments. This regulation, if permitted to be implemented, would disrupt over 30 State Medicaid programs. It would cost these States billions in lost Federal Medicaid matching funds.

There is no question about the need to establish a reasonable and rational policy for financing Medicaid Programs through voluntary donations and provider-specific taxes. However with adjournment looming just around the corner, and in light of the complexity of the issues involved, we simply need more time—time to come back next year to resolve this issue in a thoughtful and thorough way.

If Congress does not act to delay the HCFA rule, and if the administration and the States do not reach an agreement on this issue, we will see chaos result when the rule's January 1, 1992, effective date forces States to radically adjust programs in the middle of budget cycles. The result will be drastic cuts in basic medical services as well as long-term care for millions of low-income mothers, children, disabled, elderly, and mentally ill individuals.

Even if an agreement is hastily cobbled together in the next several days before adjournment, such a solution is unlikely to be equitable both to the administration and the States. We will be back in 3 months trying to solve this problem again.

This bill will give both sides the necessary breathing room to craft a meaningful solution to this difficult problem. It simply creates, in effect, a two-way moratorium. This moratorium, like that called for in similar legislation in the Senate and the House, would delay the implementation of HCFA's proposed rule until September 30, 1992. At the same time, this moratorium would not permit existing programs to grow, and would not permit any new programs. In other words, it freezes all activity until the end of the current fiscal year.

Mr. President, this bill represents a rational, reasonable approach to our current dilemma over Medicaid provider-tax and voluntary donation pro-

grams. I believe this bill will allow us to avoid a crisis in programs that work at providing health care to the poor and disabled, and I urge its immediate adoption.●

ADDITIONAL COSPONSORS

S. 310

At the request of Mr. PELL, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of S. 310, a bill to provide for full statutory wage adjustments for prevailing rate employees, and for other purposes.

S. 316

At the request of Mr. CRAIG, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of S. 316, a bill to provide for treatment of Federal pay in the same manner as non-Federal pay with respect to garnishment and similar legal process.

S. 736

At the request of Mr. GRAHAM, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 736, a bill to amend the Outer Continental Shelf Lands Act.

S. 1755

At the request of Mr. BUMPERS, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 1755, a bill to reform the concessions policies of the National Park Service, and for other purposes.

S. 1862

At the request of Mr. GRAHAM, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 1862, a bill to amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes.

S. 1886

At the request of Mr. WOFFORD, his name was added as a cosponsor of S. 1886, a bill to delay until September 30, 1992, the issuance of any regulations by the Secretary of Health and Human Services changing the treatment of voluntary contributions and provider-specific taxes by States as a source of a State's expenditures for which Federal financial participation is available under the medicaid program and to maintain the treatment of intergovernmental transfers as such a source.

At the request of Mr. MCCONNELL, the names of the Senator from Wisconsin [Mr. KASTEN], the Senator from Alabama [Mr. SHELBY], and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of S. 1886, supra.

S. 1932

At the request of Mr. BUMPERS, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 1932, a bill to amend the Internal Revenue Code of 1986 to provide a capital gains tax differential for individual and corporate taxpayers who make high-risk, long-term, growth-oriented venture and seed capital investments in start-up and other small enterprises.

S. 1933

At the request of Mr. KENNEDY, the names of the Senator from Utah [Mr. HATCH], the Senator from Hawaii [Mr. INOUYE], the Senator from Indiana [Mr. COATS], the Senator from Florida [Mr. GRAHAM], and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of S. 1933, a bill to amend titles VII and VIII of the Public Health Service Act to reauthorize and extend programs under such titles, and for other purposes.

S. 1950

At the request of Mr. DANFORTH, the names of the Senator from Nevada [Mr. REID], the Senator from Wisconsin [Mr. KASTEN], the Senator from Connecticut [Mr. DODD], the Senator from Illinois [Mr. DIXON], and the Senator from Vermont [Mr. LEAHY] were added as cosponsors of S. 1950, a bill to amend the Internal Revenue Code of 1986 to extend for 1 year certain expiring tax provisions.

SENATE JOINT RESOLUTION 140

At the request of Mr. WARNER, the name of the Senator from Idaho [Mr. CRAIG] was added as a cosponsor of Senate Joint Resolution 140, a joint resolution to designate the week of July 27 through August 2, 1991, as "National Invent America! Week."

SENATE JOINT RESOLUTION 182

At the request of Mr. ROTH, his name was added as a cosponsor of Senate Joint Resolution 182, a joint resolution proposing a Balanced Budget Amendment to the Constitution of the United States.

SENATE JOINT RESOLUTION 194

At the request of Mr. GRAMM, the name of the Senator from Georgia [Mr. FOWLER] was added as a cosponsor of Senate Joint Resolution 194, a joint resolution to designate 1992 as the "Year of the Gulf of Mexico."

SENATE JOINT RESOLUTION 228

At the request of Mr. D'AMATO, the names of the Senator from Mississippi [Mr. COCHRAN], and the Senator from North Dakota [Mr. BURDICK] were added as cosponsors of Senate Joint Resolution 228, a joint resolution to designate the week beginning February 23, 1992, as "National Manufacturing Week."

SENATE CONCURRENT RESOLUTION 65

At the request of Mr. DECONCINI, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of Senate Concurrent Resolution 65, a concurrent resolution to express the sense of the Congress that the President should recognize Ukraine's independence.

SENATE RESOLUTION 213

At the request of Mr. GORE, the names of the Senator from Louisiana [Mr. BREAUX], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of Senate Resolution 213, a resolution expressing the sense of the Senate regarding United States policy toward Yugoslavia.

SENATE RESOLUTION 221—INVESTIGATIONS OF ETHICS VIOLATIONS BY INDEPENDENT COUNSELS

Mr. COATS submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 221

Resolved,

SECTION 1. INDEPENDENT ETHICS COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the Independent Ethics Commission of the Senate (referred to as the "Ethics Commission").

(b) MEMBERSHIP.—(1) The Ethics Commission shall be comprised of 8 members appointed in accordance with paragraph (2).

(2) The majority leader and the minority leader shall each appoint to the Commission at the beginning of a Congress—

(A) 1 member who is a retired judge of a Federal or State court;

(B) 1 member who is a former member of the Senate; and

(C) 2 members who are private citizens and are not employees of the United States.

(c) TERMS.—(1)(A) A member of the Commission shall serve a term of 2 years and may be reappointed for 2 additional terms.

(2) In the case of the death or resignation of a member of the Commission a successor shall be appointed in the same manner as the member was appointed to serve until the end of the term of that member.

(d) REMOVAL.—A member of the Commission may be removed only by resolution of the Senate.

(e) DUTIES.—It shall be the duty of the Commission to—

(1) receive requests for review of an allegation described in section 2(b);

(2) make such informal preliminary inquiries in response to such a request as the Commission deems to be appropriate;

(3) if, as a result of those inquiries, the Commission determines that a full investigation is not warranted, submit a report pursuant to section 2(e); and

(4) if, as a result of those inquiries, the Commission determines that a full investigation is warranted, appoint an independent counsel pursuant to section 3.

(f) COMPENSATION OF MEMBERS.—(1) Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission.

(2) The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(g) STAFF.—(1) The Commission may, without regard to the civil service laws and regu-

lations, appoint, and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform its duties.

(2) The Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(3) Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(4) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(5) Except at a time when additional personnel are needed to assist the Commission in its review of a particular request for review under section 2, the total number of staff personnel employed by or detailed to the Commission under this subsection shall not exceed 5.

(h) INAPPLICABILITY OF THE FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

SEC. 2. REVIEW OF ALLEGATIONS OF IMPROPER MISCONDUCT AND VIOLATIONS OF LAW.

(a) DEFINITIONS.—As used in this section, the term "officer or employee of the Senate" means—

(1) an elected officer of the Senate who is not a member of the Senate;

(2) an employee of the Senate, any committee or subcommittee of the Senate, or any member of the Senate;

(3) the Legislative Counsel of the Senate or any employee of his office;

(4) an Official Reporter of Debates of the Senate and any person employed by the Official Reporters of Debates of the Senate in connection with the performance of their official duties;

(5) a member of the Capitol Police force whose compensation is disbursed by the Secretary of the Senate;

(6) an employee of the Vice President if such employee's compensation is disbursed by the Secretary of the Senate; and

(7) an employee of a joint committee of the Congress whose compensation is disbursed by the Secretary of the Senate.

(b) REQUEST FOR REVIEW.—Any person may present to the Commission a request to review and to consider the propriety of appointing an independent counsel to investigate an allegation of—

(1) improper conduct that may reflect upon the Senate;

(2) a violation of law;

(3) a violation of the Senate Code of Official Conduct (rules XXXIV, XXXV, XXXVII, XXXVIII, XXXIX, XL, XLI, and XLII of the Standing Rules of the Senate); or

(4) a violation of a rule or regulation of the Senate,

relating to the conduct of a person in the performance of his or her duties as a member, officer, or employee of the Senate.

(c) SWORN STATEMENT.—A request for review under subsection (b) shall be accompanied by a sworn statement, made under penalty of perjury under the laws of the United States, of facts within the personal knowledge of the person making the statement alleging improper conduct or a violation described in subsection (b).

(d) PUBLIC DISCLOSURE.—(1) The contents of a request for review and sworn statement submitted under subsections (b) and (c), all proceedings of the Commission, and all facts that come to the knowledge of the Commission during its inquiries shall be made available to the public except as provided in paragraph (2).

(2) The Commission may withhold information from public disclosure if the Commission, in its sole discretion, determines that the public interest in disclosure is outweighed by—

(A) harm that may be caused to the reputation of a person; or

(B) prejudice that may be caused to the rights of a person.

(e) DETERMINATION NOT TO APPOINT INDEPENDENT COUNSEL.—(1) If, after making preliminary inquiries, the Commission determines not to appoint an independent counsel pursuant to section 3, the Commission shall submit to the members of the Senate a report that—

(A) states findings of fact made as a result of the inquiries;

(B) states any conclusions that may be drawn with respect to whether there is substantial credible evidence that improper conduct or a violation of law may have occurred; and

(C) states its reasons for concluding that further investigation is not warranted.

(2) After submission of a report under paragraph (1), no action may be taken in the Senate to impose a sanction on a person who was the subject of the Commission's inquiries on the basis of any conduct that was alleged in the request for review and sworn statement.

(3) If the Commission determines that any part of a sworn statement presented to it under subsection (c) may have been a false statement made knowingly and willfully, the Commission may refer the matter to the Attorney General for prosecution.

SEC. 3. INDEPENDENT COUNSEL.

(a) APPOINTMENT.—(1) If, after making preliminary inquiries, the Commission determines that—

(A) there is substantial credible evidence that improper conduct or a violation described in section 2(b) may have occurred; and

(B) in view of the seriousness of the allegation and other relevant considerations, a full investigation of the alleged misconduct or violation is warranted,

the Commission shall appoint an independent counsel to conduct an investigation.

(2)(A) The Commission shall appoint as independent counsel a person who has appropriate experience and who undertakes to conduct the investigation in a prompt, responsible, and cost-effective manner and to serve to the extent necessary to complete the investigation.

(B) The Commission may not appoint as independent counsel a person who holds any office of profit or trust under the United States.

(b) COMPENSATION.—An independent counsel shall receive compensation at the per diem rate equal to the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(c) SCOPE OF INVESTIGATION.—(1) At the time that the Commission appoints an independent counsel, the Commission shall describe with specificity in the appointment the subject matter with respect to which the investigation shall be conducted.

(2) The Commission may enlarge the subject matter with respect to which an investigation shall be conducted—

(A) at the recommendation of the independent counsel, based on facts that come to the knowledge of the independent counsel during an investigation; or

(B) in response to a request for review and sworn statement alleging new facts that is presented to the Commission by any person prior to the conclusion of an investigation.

(d) GENERAL AUTHORITIES.—(1) An independent counsel may—

(A) make such expenditures;

(B) hold such hearings;

(C) require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, documents, or other records of any kind;

(D) administer such oaths;

(E) take such testimony orally or by deposition; and

(F) employ and fix the compensation of such assistant counsel, investigators, technical assistants, consultants, and clerical staff as the independent counsel deems advisable.

(2) An independent counsel may procure the temporary services (not in excess of 1 year) or intermittent services of consultants by contract as independent contractors or by employment at daily rates of compensation not in excess of the per diem equivalent of the highest rate of compensation that may be paid to a regular employee of the Committee on Rules and Administration.

(e) USE OF SERVICES, FACILITIES, INFORMATION, AND EMPLOYEES.—(1) With the consent of the department or agency concerned, an independent counsel may—

(A) use the services, facilities, and information of any department or agency of the United States; and

(B) employ on a reimbursable basis or otherwise the services of such personnel of such a department or agency as the independent counsel deems advisable.

(2) With the consent of the committee, subcommittee, or office concerned, an independent counsel may use the services, facilities, and information of any committee, subcommittee, or office of the Senate when the independent counsel determines that to do so is necessary and appropriate.

(f) OPPORTUNITY TO BE HEARD.—An independent counsel shall provide a person that is the subject of an investigation notice of the investigation and a full opportunity to respond orally and in writing and submit evidence in response to allegations made concerning the person.

(g) REPORT AND RECOMMENDATION.—(1) At the conclusion of an investigation, an independent counsel shall submit to the Members of the Senate a report that—

(A) states findings of fact made in the investigation;

(B) states any conclusions that may be drawn with respect to whether improper conduct or a violation of law has occurred; and

(C) recommends an appropriate sanction for any improper conduct or violation of law that is found to have occurred.

(2) A sanction recommended by an independent counsel in a report under paragraph (1) may include—

(A) in the case of improper conduct or a violation of law by a Member of the Senate, censure, expulsion, or recommendation to the appropriate party conference regarding

the Member's seniority or position of responsibility; and

(B) in the case of improper conduct or a violation of law by an officer or employee of the Senate, suspension or dismissal from employment by the Senate.

(3) At any time at which an independent counsel finds facts that give reason to believe that a violation of law has occurred, the independent counsel shall report those facts to the appropriate Federal or State law enforcement authorities.

(h) SENATE ACTION.—After a report is submitted under subsection (g), any Member of the Senate may introduce a resolution proposing that the Senate adopt the report of the independent counsel with or without modification and impose an appropriate sanction.

(i) PAYMENT OF EXPENSES.—Expenses of the Commission and compensation and expenses of an independent counsel shall be paid out of the contingent fund of the Senate.

SEC. 4. TRANSFER OF FUNCTIONS TO THE COMMITTEE ON RULES AND ADMINISTRATION.

(a) AMENDMENT OF RULE XXV.—Paragraph 1(n) of rule XXV of the Standing Rules of the Senate is amended—

(1) by striking "and" at the end of clause (2)(A);

(2) by striking the period at the end of clause (2)(B) and inserting "; and";

(3) by adding at the end of clause (2) the following new subclauses:

"(C) administer the reporting requirements of title I of the Ethics in Government Act of 1978 (5 U.S.C. App.);

"(D) recommend to the Senate, by report or resolution, such additional rules or regulations as the committee determines to be necessary or desirable to ensure proper standards of conduct by Members, officers, and employees of the Senate in the performance of their duties and the discharge of their responsibilities;

"(E) issue interpretative rulings explaining and clarifying the application of any law, the Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction;

"(F) render an advisory opinion, in writing within a reasonable time, in response to a written request by a Member or officer of the Senate or a candidate for nomination for election, or election to the Senate, concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion;

"(G) in its discretion render an advisory opinion in writing within a reasonable time in response to a written request by any employee of the Senate concerning the application of any law, the Senate Code of Official Conduct, or any rule or regulation of the Senate within its jurisdiction to a specific factual situation pertinent to the conduct or proposed conduct of the person seeking the advisory opinion;

"(H) perform the functions assigned to the Select Committee on Standards and Conduct of the Senate in section 6 of Public Law 93-191 (2 U.S.C. 502); and

"(I) be deemed to be an 'employing agency' under section 7342(a)(6)(B) in place of the Select Committee on Ethics."; and

(4) by adding at the end the following new clauses:

"(3)(A) Notwithstanding any provision of the Senate Code of Official Conduct or any rule or regulation of the Senate, a person who relies on any provision or finding of an advisory opinion rendered under clause (2)(F) or (G) and who acts in good faith in accordance with the provisions and findings of such an advisory opinion shall not, as a result of any such act, be subject to any sanction by the Senate.

"(B) An advisory opinion rendered under clause (2)(F) or (G) may be relied on by—

"(i) any person involved in the specific transaction or activity with respect to which the advisory opinion is rendered if the request for the advisory opinion included a complete and accurate statement of the specific factual situation; and

"(ii) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which the advisory opinion is rendered.

"(C) An advisory opinion rendered under clause (2)(F) or (G) shall be printed in the Congressional Record with appropriate deletions to assure the privacy of the individual concerned. Before rendering an advisory opinion the committee shall, to the extent practicable, provide any interested party with an opportunity to transmit written comments to the committee with respect to the request for such advisory opinion. The advisory opinions issued by the committee shall be compiled, indexed, reproduced, and made available on a periodic basis.

"(D) A brief description of a waiver granted under section 102(a)(2)(B) of title I of Ethics in Government Act of 1978 (5 U.S.C. App.) or paragraph 1 of rule XXXV shall be made available upon request in the committee office with appropriate deletions to assure the privacy of the person concerned.

"(4)(A) The responsibilities of the Committee on Rules and Administration under clause (3)(C), (D), (E), (F), (G), (H), and (I) and under the Senate Code of Official Conduct shall be administered by a Subcommittee on Ethics comprised of an equal number of members of the major political parties.

"(B) A determination made or action taken by the Subcommittee on Ethics may be modified by—

"(i) the Committee on Rules and Administration by a vote of the majority of the members of each of the major political parties; or

"(ii) resolution of the Senate.".

(b) AMENDMENT OF SENATE CODE OF OFFICIAL CONDUCT.—Rules XXXV, XXXVII, and XLI of the Standing Rules of the Senate are amended—

(1) by striking "Select Committee on Ethics" each place it appears and inserting "Committee on Rules and Administration"; and

(2) by striking "Select Committee" each place it appears and inserting "Committee on Rules and Administration".

SEC. 5. ABOLISHMENT OF SELECT COMMITTEE ON ETHICS.

Effective on the date that the initial 8 members of the Commission take office, the following resolutions are repealed:

(1) Senate Resolution 338, 88th Cong., 2d Sess., 100 Cong. Rec. 16939 (1964).

(2) Senate Resolution 223, 96th Cong., 1st Sess., 125 Cong. Rec. 22471 (1979).

(3) Senate Resolution 290, 96th Cong., 1st Sess., 125 Cong. Rec. 33623 (1979).

(4) Senate Resolution 425, 97th Cong., 2d Sess., 128 Cong. Rec. 20820 (1982).

• Mr. COATS. Mr. President, I rise today to submit legislation to abolish the Senate Ethics Committee and replace it with an independent counsel.

Americans have become deeply cynical about the Congress. They ask if an institution which can't govern itself can govern the rest of us. And frankly, the failure of the Ethics Committee to act promptly and to place clear standards of conduct above partisanship has fed the disillusionment. Raw politics rules, not principled standards of public service.

You would not try an accused person before a jury of his family. But in the eyes of most Americans, that is essentially what the Senate Ethics Committee amounts to. For evidence, we need look no further than the Keating investigation.

My resolution replaces the Senate Ethics Committee with an independent commission tasked with reviewing all allegations of misconduct. The commission would be given full investigatory authority. Where evidence so warrants, the commission is authorized to appoint an independent counsel to pursue allegations. Essentially, my resolution applies the same standard of independent scrutiny to the legislative branch which we now apply to the executive.

I believe that we have a unique opportunity—a moment when public anger burns white hot—to implement meaningful reform and to begin to restore the public trust essential to effective leadership.•

AMENDMENTS SUBMITTED

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT

RIEGLE (AND GARN) AMENDMENT NO. 1350

Mr. RIEGLE (for himself and Mr. GARN) proposed an amendment to the bill (S. 543) to reform Federal deposit insurance, protect the deposit insurance funds, and improve supervision and regulation of and disclosure relating to federally insured depository institutions, as follows:

Beginning with page 122, line 23, strike all through page 125, line 8, and insert the following:

"(viii) SPECIAL ASSESSMENT TO RECOVER LOSSES ON FOREIGN DEPOSITS.—

"(I) IN GENERAL.—This paragraph shall apply if—

"(aa) the Corporation incurs a loss with respect to an insured depository institution; and

"(bb) persons with foreign deposits at the institution receive more than they would have received if a receiver had been appointed for the institution on the relevant date and the applicable foreign deposits had been included as part of the receivership's liabilities.

"(II) SPECIAL ASSESSMENT REQUIRED.—The Corporation shall, as soon as practicable, recover the difference between—

"(aa) the amount that persons with foreign deposits at the institution received, and

"(bb) the amount that the Corporation estimates those persons would have received if

a receiver had been appointed for the institution on the relevant date and the applicable foreign deposits had been included as part of the receivership's liabilities,

by imposing 1 or more special assessments on all members of the deposit insurance fund of which the institution was or is a member, in proportion to the foreign deposits held by those members at the beginning of the semiannual period containing the relevant date. The Corporation shall base the estimate required by item (bb) on the estimated loss that the Corporation will incur in the resolution actually undertaken with respect to the institution. Any calculation under this subparagraph shall be in the Corporation's sole discretion.

"(III) TIMING OF SPECIAL ASSESSMENTS.—

"(aa) IN GENERAL.—Special assessments under subclause (II) shall begin not later than the semiannual period beginning 90 days after the date on which the aggregate amounts calculated under subclause (II) (with respect to all institutions that were or are members of the deposit insurance fund), and not yet assessed, exceed $1,000,000.

"(bb) INTEREST ON DELAYED ASSESSMENTS.—Any amount calculated under subclause (II) and not yet assessed shall bear interest at the daily average yield on 3-month Treasury obligations.

"(IV) DEFINITIONS.—For purpose of this paragraph:

"(aa) CAPITAL CATEGORIES.—The terms 'adequately capitalized' and 'significantly undercapitalized' have the same meanings as in section 37 of the Federal Deposit Insurance Act.

"(bb) FOREIGN DEPOSIT.—The term 'foreign deposit' means any obligation of an insured depository institution described in subparagraph (A) or (B) of section 3(1)(5).

"(cc) RELEVANT DATE.—The term 'relevant date' means the date on which the earliest of the following occurs with respect to an insured depository institution:

"(AA) The institution is significantly undercapitalized, and has advances from a Federal Reserve bank outstanding for more than 5 consecutive days (without subsequently becoming adequately capitalized).

"(BB) The Corporation initiates assistance under section 13(c) with respect to the institution.

"(CC) A receiver or conservator is appointed for the institution.".

Beginning on page 231, line 21, strike all through page 233, line 22, and insert the following:

"(6) SPECIAL ASSESSMENT TO RECOVER LOSSES ON FOREIGN DEPOSITS.—

"(A) IN GENERAL.—This paragraph shall apply if—

"(i) the Corporation incurs a loss with respect to an insured depository institution; and

"(ii) persons with foreign deposits at the institution receive more than they would have received if a receiver had been appointed for the institution on the relevant date and the applicable foreign deposits had been included as part of the receivership's liabilities.

"(B) SPECIAL ASSESSMENT REQUIRED.—The Corporation shall, as soon as practicable, recover the difference between—

"(i) the amount that persons with foreign deposits at the institution received, and

"(ii) the amount that the Corporation estimates those persons would have received if a receiver had been appointed for the institution on the relevant date and the applicable foreign deposits had been included as part of the receivership's liabilities,

by imposing 1 or more special assessments on all members of the deposit insurance fund of which the institution was or is a member, in proportion to the foreign deposits held by those members at the beginning of the semiannual period containing the relevant date.

The Corporation shall base the estimate required by clause (ii) on the estimated loss that the Corporation will incur in the resolution actually undertaken with respect to the institution. Any calculation under this subparagraph shall be in the Corporation's sole discretion.

"(C) TIMING OF SPECIAL ASSESSMENTS.—

"(i) IN GENERAL.—Special assessments under subparagraph (B) shall begin not later than the semiannual period beginning 90 days after the date on which the aggregate amounts calculated under subparagraph (B) (with respect to all institutions that were or are members of the deposit insurance fund), and not yet assessed, exceed $1,000,000.

"(ii) INTEREST ON DELAYED ASSESSMENTS.—Any amount calculated under subparagraph (B) and not yet assessed shall bear interest at the daily average yield on 3-month Treasury obligations.

"(D) DEFINITIONS.—For purposes of this paragraph:

"(i) CAPITAL CATEGORIES.—The terms 'adequately capitalized' and 'significantly undercapitalized' have the same meanings as in section 37 of the Federal Deposit Insurance Act.

"(ii) FOREIGN DEPOSIT.—The term 'foreign deposit' means any obligation of an insured depository institution described in subparagraph (A) or (B) of section 3(1)(5).

"(iii) RELEVANT DATE.—The term 'relevant date' means the date on which the earliest of the following occurs with respect to an insured depository institution:

"(I) The institution is significantly undercapitalized, and has advances from a Federal Reserve bank outstanding for more than 5 consecutive days (without subsequently becoming adequately capitalized).

"(II) The Corporation initiates assistance under section 13(c) with respect to the institution.

"(III) A receiver or conservator is appointed for the institution.".

On page 295, between lines 9 and 10, insert the following:

"(C) SPECIAL ASSESSMENTS ON FOREIGN DEPOSITS.—The Corporation shall not consider the proceeds of any special assessment on foreign deposits.".

KOHL (AND OTHERS) AMENDMENT NO. 1351

Mr. KOHL (for himself, Mr. NICKLES, and Mr. DECONCINI) proposed an amendment to the bill S. 543, supra, as follows:

At the end of title II, add the following new section:

SEC. 231. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) one of the primary purposes of banking legislation is to restore the confidence of the American public in the soundness and equity of the United States banking system;

(2) public confidence in the soundness of the Bank Insurance Fund has been shaken by a Congressional Budget Office estimate that by the close of 1993, bank failures among large banks will cost the insurance fund approximately $15,000,000,000, compared to a $5,000,000,000 cost for the failures among small banks;

(3) public confidence in the equity of the deposit insurance system has been shaken by the too-big-to-fail policy—a policy which granted less Federal protection to the depositors in smaller banks, such as the Freedom National Bank in Harlem, than to depositors in larger banks, such as the Bank of New England;

(4) public confidence in the soundness and equity of the deposit insurance system has been shaken by the United States Government's practice of covering foreign deposits with Federal deposit insurance but not assessing those deposits with deposit insurance premiums;

(5) this practice has resulted in smaller community banks being charged deposit insurance premiums on a higher percentage of their deposit base than their larger competitors;

(6) foreign deposits are not insured deposits under the Federal Deposit Insurance Act; and

(7) this Act take important steps to address the too-big-to-fail policy and to end the unauthorized coverage of unassessed foreign deposits.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that any final banking legislation should make it clear that foreign deposits are not covered by deposit insurance unless those deposits are assessed for that coverage.

DIXON AMENDMENT NO. 1352

Mr. DIXON proposed an amendment to the bill S. 543, supra, as follows:

At the appropriate place add the following additional title:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Resolution Trust Corporation Reform Act of 1991".

(b) TABLE OF CONTENTS.—

SUBTITLE A—REFORM OF THE RTC

SEC. 101. OVERSIGHT OF THE RESOLUTION TRUST CORPORATION.

(a) IN GENERAL.—Effective on the date of enactment of this Act—

(1) the Oversight Board established under section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is abolished; and

(2) section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by striking subsections (a), (m), and (n) and by redesignating subsections (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (o), (p), (q), and (r), as subsections (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), and (o), respectively.

(b) DUTIES OF THE BOARD OF DIRECTORS.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended—

(1) in subsection (a)(1), as redesignated, by striking subparagraph (C) and inserting the following:

"(C) MANAGEMENT BY BOARD OF DIRECTORS.—The Corporation shall be managed by or under the direction of its Board of Directors."; and

(2) by striking paragraph (8) of subsection (a), as redesignated, and inserting the following:

"(8) BOARD OF DIRECTORS.—

"(A) IN GENERAL.—The Board of Directors of the Corporation shall consist of—

"(i) the Chief Executive Officer of the Resolution Trust Corporation;

"(ii) the Secretary of the Treasury;

"(iii) the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation; and

"(iv) 2 independent members who shall be appointed by the President, by and with the advice and consent of the Senate. The nominations of the independent members shall be referred to the Committee on Banking, Housing, and Urban Affairs of the Senate.

"(B) VACANCY.—Any vacancy on the Board shall be filled in the same manner as the original appointment.

"(C) CHAIRPERSON.—The Chief Executive Officer of the Resolution Trust Corporation shall serve as Chairperson of the Board.

"(D) COMPENSATION OF GOVERNMENT MEMBERS.—The Secretary of the Treasury and the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation shall receive no pay, allowances, or benefits from the Corporation by reason of their service on the Board of Directors, but shall receive allowances in accordance with subchapter I of chapter 57 of title 5, United States Code, for necessary expenses of travel, lodging, and subsistence incurred in attending meetings and other activities of the Board of Directors, as set forth in the bylaws issued by the Board of Directors.

"(E) INDEPENDENT MEMBERS.—An independent member shall—

"(i) not hold any other appointed office during his or her term as a member;

"(ii) not be a member of the same political party as the other individual member; and

"(iii) be appointed for a term of 5 years.

"(F) COMPENSATION FOR INDEPENDENT MEMBERS.—The independent members of the Board of Directors shall be paid at a rate equal to the daily equivalent of the rate of basic pay for Level II of the Executive Schedule for each day (including travel time) during which such member is engaged in the actual performance of duties of the Board.

"(G) QUORUM REQUIRED.—A quorum shall consist of 3 members of the Board of Directors of the Corporation. All decisions of the Corporation shall require an affirmative vote of at least a majority of the members voting.

"(H) DUTIES.—

"(i) IN GENERAL.—The Board of Directors shall oversee and be accountable for the activities of the Corporation.

"(ii) STRATEGIC REVIEW.—The Board of Directors shall develop and establish overall strategies, policies, and goals for the Corporation, including such items as general policies for case resolution, the management and disposition of assets, the use of private contractors, and the use of notes, guarantees, or other obligations by the Corporation.

"(iii) FINANCING.—The Board of Directors shall review prior to implementation any periodic financing requests made to the Secretary of the Treasury or the Federal Financing Bank or otherwise developed by the Corporation.

"(iv) RULEMAKING.—The Board of Directors shall prescribe such rules and regulations as it may deem necessary to carry out the provisions of this section or any other law which it has the responsibility of administering or enforcing.

"(v) MEETINGS.—All meetings of the Board of Directors shall be open meetings, subject to the provisions of section 552b of title 5, United States Code.

"(vi) TRANSCRIPTS.—The Board shall maintain a transcript of each of its meetings.

"(vii) BUDGET.—The Board of Directors shall adopt the budget of the Corporation and monitor the performance of the Corporation relative to approved budget plans.

"(viii) ADVISORY BOARDS.—The Board of Directors shall maintain 2 national advisory boards and not less than 6 regional advisory boards, to be established pursuant to subsection (c).

"(ix) INTERNAL AUDITS.—The Board of Directors shall evaluate audits by the Inspector General and other congressionally required audits and reports.

"(x) COMMITTEES.—The Board shall establish such committees as it deems appropriate and delegate requisite authority to such committees.";

(3) in subsection (a)(9), as redesignated, by adding at the end the following new subparagraph:

"(C) CHIEF EXECUTIVE OFFICER.—The Corporation shall have a chief executive officer appointed by the President, by and with the advice and consent of the Senate. The chief executive officer shall serve a 5-year term. The chief executive officer shall be an employee of the Federal Deposit Insurance Corporation provided to the Corporation for that purpose and shall receive such compensation and benefits as the Corporation's Board of Directors may determine from time to time in accordance with the laws and regulations applicable to the personnel practices of the Federal Deposit Insurance Corporation. The Corporation's Board of Directors shall provide the chief executive officer with such powers as shall be adequate for the chief executive officer's efficient management and administration of the Corporation's day-to-day affairs. Among such duties, authorities, and powers shall be the duty, authority, and power, subject to the ultimate direction of the Corporation's Board of Directors:

"(i) To specify the duties, authorities, and powers of other officers of the Corporation and the duties, authorities, and powers of other persons, including employees of the Federal Deposit Insurance Corporation, acting on behalf of the Corporation.

"(ii) To make and modify staffing plans and organizational and management structures of the Corporation to meet the goals of this Act and other applicable laws.

"(iii) To direct all aspects of the Corporation's operations in a manner consistent with general practices of the private sector and with this Act and other applicable law.

"(iv) To modify and implement existing rules, regulations, standards, policies, principles, procedures, guidelines, and statements in order to optimize the Corporation's performance, including, but not limited to, its performance in the disposition of assets.

"(v) To develop, adopt, and implement new rules, regulations, standards, policies, principles, procedures, guidelines, and statements in order to optimize the Corporation's performance, including, but not limited to, its performance in the disposition of assets.

"(vi) To set and adjust the compensation and benefits of persons (other than the chief executive officer) acting on behalf of the Corporation in accordance with laws and regulations applicable to the personnel practices of the Federal Deposit Insurance Corporation.

"(vii) To choose employees of the Federal Deposit Insurance Corporation to be provided to the Corporation by the Federal Deposit Insurance Corporation, to request that the Federal Deposit Insurance Corporation employ specified persons for that purpose, and to return at any time to the Federal Deposit Insurance Corporation any such employee so provided.";

(4) in subsection (c), as redesignated—

(A) in paragraph (1)—

(i) by striking "(b)(3)(A)" in subparagraph (A) and inserting "(a)(3)(A)"; and

(ii) by striking "(2)" in subparagraph (B)(ii) and inserting "(3)";

(B) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively;

(C) by inserting after paragraph (1) the following new paragraph:

"(2) NATIONAL HOUSING ADVISORY BOARD.—

"(A) ESTABLISHMENT.—The Board of Directors shall establish a National Housing Advisory Board to advise the Board of Directors on policies and programs related to the provision of low-income housing.

"(B) MEMBERSHIP.—The National Housing Advisory Board shall consist of—

"(i) the Secretary of Housing and Urban Development; and

"(ii) the chairpersons of any regional advisory boards established pursuant to paragraph (3).

"(C) MEETINGS.—The National Housing Advisory Board shall meet 4 times a year, or more frequently if requested by the Board."; and

(D) in paragraph (3)(A), as redesignated, by striking "(b)(3)(A)" and inserting "(a)(3)(A)";

(5) by striking subsection (a)(1)(C), as redesignated;

(6) in subsection (a)(3), as redesignated, by striking "to carry out a program, under the general oversight of the Oversight Board and through the Federal Deposit Insurance Corporation (or any replacement authorized pursuant to subsection (m)), including";

(7) in subsection (a)(7), as redesignated—

(A) by striking "subject to general supervision by the Oversight Board under subsection (a) of this section and shall be"; and

(B) by striking "(j)" and inserting "(a)(8)(b)(iii) and (i)";

(8) by striking subsection (a)(9), as redesignated, and inserting the following:

"(9) STAFF.—

"(A) IN GENERAL.—The Corporation itself shall have no employees.

"(B) UTILIZATION OF EMPLOYEES.—The Corporation may use employees of the Federal Deposit Insurance Corporation and shall reimburse the Federal Deposit Insurance Corporation for its actual costs incurred in providing such employees. Such employees shall remain subject to the personnel practices of the Federal Deposit Insurance Corporation. The Corporation may use administrative services of the Federal Deposit Insurance Corporation and shall reimburse the Federal Deposit Insurance Corporation for its actual costs incurred in providing such services.";

(9) in subsection (a)(10), as redesignated—

(A) by striking subparagraphs (B) and (L); and

(B) by redesignating subparagraphs (C), (D), (E), (F), (G), (H), (I), (J), (K), (M), and (N) as paragraphs (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), and (L), respectively;

(10) in subsection (a)(11)(B)(iv), as redesignated—

(A) by striking "the Oversight Board and"; and

(B) by striking "(k)" and inserting "(j)";

(11) in subsection (a)(11)(C)(i), as redesignated, by striking "The cost or income of any modification shall be a liability or an asset of the Corporation or the FSLIC Resolution Fund as determined by the Oversight Board" and inserting "The cost or income of any modification shall be a liability or an asset of the FSLIC Resolution Fund";

(12) in subsection (a)(12), as redesignated, by striking paragraphs (A) and (B) and inserting the following:

"(A) IN GENERAL.—The Chief Executive Officer of the Resolution Trust Corporation may issue or modify such rules, regulations, standards, policies, principles, procedures, guidelines, and statements as are necessary or appropriate to carry out this section. The Chief Executive Officer of the Resolution Trust Corporation shall keep the Board of Directors reasonably informed of such actions. The Board of Directors shall have the power to require modification of any such actions.

"(B) NOTICE AND COMMENT.—Such rules, regulations, standards, policies, procedures, guidelines, and statements shall be promulgated pursuant to subchapter II of chapter 5 of title 5, United States Code.";

(13) by striking subsection (a)(13), as redesignated, and inserting the following:

"(13) PERIODIC FINANCING REPORTS.—The Corporation shall provide the Secretary of the Treasury with quarterly financing reports which shall detail—

"(A) anticipated funding requirements for operations, case resolutions, and asset liquidation;

"(B) anticipated payments on previously issued notes, guarantees, other obligations, and related activities; and

"(C) any proposed requests for advances from the Secretary of the Treasury or from the Federal Financing Bank.";

(14) in subsection (c), as redesignated, by striking "Oversight Board" each place it appears and inserting "Board of Directors of the Corporation";

(15) in subsection (f), as redesignated, by striking "and the Oversight Board" each place it appears;

(16) in subsection (g)(1), as redesignated, by striking "the Oversight Board,";

(17) in subsection (h)(1), as redesignated, by striking ", upon approval of the Oversight Board,";

(18) in subsection (j)(1), as redesignated, by striking "Oversight Board" each place it appears and inserting "Board of Directors of the Corporation";

(19) in subsection (j)(2), as redesignated, by striking "Oversight Board" wherever it appears and inserting "Board of Directors of the Corporation";

(20) in subsection (j)(3)(A), as redesignated, by striking "Oversight Board" and inserting "Board of Directors of the Corporation";

(21) in subsection (j)(3)(B), as redesignated, by striking "the Oversight Board and";

(22) in subsection (j)(4)(A), as redesignated, by striking "Oversight Board and the";

(23) in subsection (j)(5)(A), as redesignated—

(A) by striking "the Oversight Board and"; and

(B) by striking ", the Federal Deposit Insurance Corporation, and the Oversight Board";

(24) by striking subsection (j)(5)(B)(iii), as redesignated, and inserting the following:

"(iii) The number of persons acting on behalf of the Corporation and the Federal Deposit Insurance Corporation at the beginning and end of the reporting period.";

(25) in subsection (j)(5)(B)(xi), as redesignated, by striking "Oversight Board" and inserting "Board of Directors of the Corporation";

(26) in subsection (j)(5)(B)(xii), as redesignated, by striking "the Oversight Board or";

(27) in subsection (j)(6), as redesignated, by striking "Oversight Board" each place it appears and inserting "Chief Executive Officer of the Corporation";

(28) in subsection (j)(7), as redesignated—

(A) in subparagraph (A), by striking "Before January 31, 1990, the Oversight Board and" and inserting "Before January 31, 1992, the Chief Executive Officer of the Corporation"; and

(B) in subparagraph (B)—

(i) by striking "of the Oversight Board and the Corporation", and

(ii) by striking "Oversight Board and the Corporation"; and inserting "the Chief Executive Officer of the Corporation";

(29) in subsection (j)(8), as redesignated, by striking "Oversight Board" and inserting "Board of Directors of the Corporation";

(30) in subsection (j)(9), as redesignated, by striking "Oversight Board" each place it appears and inserting "Board of Directors of the Corporation";

(31) by striking subsection (k)(3), as redesignated, and inserting the following:

"(3) REMOVAL AND REMAND.—

"(A) IN GENERAL.—The Corporation, in any capacity and without bond or security, may remove any action, suit, or proceeding from a State court to the United States district court with jurisdiction over the place where the action, suit, or proceeding is pending, to the United States District Court for the District of Columbia, or to the United States District Court with jurisdiction over the principal place of business of any institution for which the Corporation has been appointed conservator or receiver if the action, suit, or proceeding is brought against the institution or the Corporation as conservator or receiver of such institution. The removal of any such, suit, or proceeding shall be instituted—

"(i) not later than 90 days after the date the Corporation is substituted as a party, or

"(ii) not later than 30 days after service on the Corporation, if the Corporation is named as a party in any capacity and if such suit is filed after August 9, 1989.

"(B) SUBSTITUTION.—The Corporation shall be deemed substituted in any action, suit, or proceeding for a party upon the filing of a copy of the order appointing the Corporation as conservator or receiver for that party or the filing of such other pleading informing the court that the Corporation has been appointed conservator or receiver for such party.

"(C) APPEAL.—The Corporation may appeal any order of remand entered by a United States district court.";

(32) in subsection (m), as redesignated—

(A) in paragraph (1)(A), by striking "the Oversight Board or" wherever it appears;

(B) in paragraphs (1), (2), (3), and (5), by striking "Oversight Board and the" wherever it appears;

(C) in paragraph (4)—

(i) by inserting after "The chief executive officer" "or any independent member of the Board of Directors";

(ii) by inserting after "the chief executive was" "or the independent member of the Board of Directors was"; and

(iii) by inserting after "chief executive officer" wherever it appears "or independent member";

(D) in paragraph (6)(A), by striking "Oversight Board" and inserting "Board of Directors of the Corporation";

(E) in paragraph (7)—

(i) by striking "Oversight Board or the" wherever it appears; and

(ii) in subparagraph (B), by striking "or the Oversight Board"; and

(F) in paragraph (8)—

(i) by striking "(8) PRIORITY OF OVERSIGHT BOARD RULES", and inserting "(8) PRIORITY OF RULES";

(ii) by striking "or the Oversight Board"; and

(iii) by striking "by the Oversight Board" and inserting "by the Board of Directors of the Corporation"; and

(33) in subsection (n), as redesignated, by striking "or of the Oversight Board" each place it appears.

(c) CONFORMING AMENDMENTS.—

(1) INSPECTOR GENERAL ACT.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended in paragraph (1) by striking "the Oversight Board" and inserting a semicolon.

(2) COMPENSATION.—Section 5313 of title 5, United States Code, is amended by striking "Independent Members, Oversight Board, Resolution Trust Corporation." and inserting "Independent Members, Board of Directors, Resolution Trust Corporation.".

(3) TIMELINESS OF REPORTS.—Section 102(c) of the Resolution Trust Corporation Funding Act of 1991 (12 U.S.C. 1441a note) is amended—

(A) by striking "the President of the Oversight Board, and"; and

(B) by striking "Chairperson of the Resolution Trust Corporation" and inserting "Chief Executive Officer of the Resolution Trust Corporation".

(d) RIGHTS OF EMPLOYEES.—Section 404 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (103 Stat. 361) is amended—

(1) in paragraph (2)—

(A) by inserting "grade," after "status, tenure,"; and

(B) by inserting "or, if the employee is a temporary employee, separated in accordance with the terms of the appointment" after "cause"; and

(2) in paragraph (9)—

(A) by striking "section 21A(m)" and inserting "section 21A(*l*)";

(B) by striking "of such Corporation shall be transferred to" and inserting "of the Federal Deposit Insurance Corporation assigned

to the Resolution Trust Corporation shall be reassigned to a position within"; and

(C) by striking "of this subsection" and inserting "of this section".

(e) INTERIM APPOINTMENTS.—

(1) CHIEF EXECUTIVE OFFICER.—The President shall appoint an interim Chief Executive Officer who shall serve until the earlier of June 30, 1992, or the date on which the Chief Executive Officer of the Resolution Trust Corporation is appointed and takes office under section 21A(a)(8) of the Federal Home Loan Bank Act.

(2) RESOLUTION TRUST CORPORATION BOARD.—The President shall appoint 2 interim independent members, each of whom shall serve on the Board of Directors of the Corporation until the earlier of June 30, 1992, or the date on which the 2 independent members of the Board are appointed and take office under section 21A(a)(8) of the Federal Home Loan Bank Act.

(3) STATUS.—The interim Chief Executive Officer and interim independent members shall have the same authorities and duties as the Chief Executive Officer and independent members provided for by section 21A(a) of the Federal Home Loan Bank Act.

SEC. 103. SAVINGS AND TRANSITIONAL PROVISIONS.

(a) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—This title shall not affect the validity of any right, duty, or obligation of the United States, the Corporation, the Oversight Board, or any other person, which—

(A) arises under or pursuant to the Federal Home Loan Bank Act, or any other provision of law applicable with respect to the Oversight Board; and

(B) existed on the day before the date of the enactment of this Act.

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Oversight Board, with respect to any function of the Oversight Board, shall abate by reason of the enactment of this Act, except that the Board of Directors of the Corporation shall be substituted for the Oversight Board as a party to any such action or proceeding.

(b) CONTINUATION OF ORDERS, RESOLUTIONS, DETERMINATIONS, AND REGULATIONS.—All orders, resolutions, determinations, and regulations, which—

(1) have been issued, made, prescribed, or allowed to become effective by the Oversight Board (including orders, resolutions, determinations, and regulations which relate to the conduct of conservatorships and receiverships), or by a court of competent jurisdiction, in the performance of functions which are transferred by this Act; and

(2) are in effect on the date this Act takes effect,

shall continue in effect according to the terms of such orders, resolutions, determinations, and regulations, and shall be enforceable by or against the Board of Directors until modified, terminated, set aside, or superseded in accordance with applicable law by the Board of Directors, by any court of competent jurisdiction, or by operation of law.

(c) EMPLOYEE PROTECTIONS.—(1)(A) Any permanent employee of the Federal Deposit Insurance Corporation who was performing services on behalf of the Resolution Trust Corporation immediately prior to the enactment of this Act shall continue to be assigned to perform services on behalf of the Resolution Trust Corporation with the same status, tenure, grade, and pay, unless voluntarily separated, or removed for cause. Temporary employees may be separated in accordance with the terms of their appointment.

(B) Any reduction-in-force or reorganization that occurs after the one-year period specified in subparagraph (A) shall be conducted in accordance with chapters 33 and 35 of title 5, United States Code, and the procedures promulgated pursuant to them. Any such reduction-in-force or reorganization shall be deemed a "major reorganization" or a "major reduction-in-force" for purposes of section 8336(d)(2) and 8414(b)(1)(B) of title 5, United States Code, and any separated employee shall be entitled to severance payments in accordance with section 5595 of title 5, United States Code.

(2)(A) Effective upon enactment of this Act, each officer and employee of the Oversight Board, employed by such Board on the day before the date of enactment of this Act, shall be transferred to the Federal Deposit Insurance Corporation, and such transfer shall be deemed a transfer of function for the purpose of section 3503 of title 5, United States Code. Each transferred officer and employee, including officers and employees in the Senior Executive Service, or its equivalent, shall be entitled to the protections provided transferred employees under subsections (2), and (4) through (7) of section 404 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, except that the liability for any difference in the costs and benefits described in paragraph (5) of such section shall be a liability of the Resolution Trust Corporation and not the Office of Thrift Supervision. Within 60 days of the date of enactment of this Act, the Federal Deposit Insurance Corporation shall assign each transferred officer and employee to a position performing services on behalf of the Resolution Trust Corporation with responsibilities commensurate with the qualifications and experience of each such transferred officer and employee, as determined by the Federal Deposit Insurance Corporation. Nothing contained herein shall be construed to require the Federal Deposit Insurance Corporation to assign any such transferred officer or employee to a position held by any officer or any employee of the Federal Deposit Insurance Corporation or of the Resolution Trust Corporation.

(B) Any employee that declines a transfer pursuant to subparagraph (A), shall be entitled to severance pay in accordance with section 5595 of title 5, United States Code. All such severance pay shall be paid by the Resolution Trust Corporation.

(C) If otherwise eligible, in addition to the severance pay provided by subparagraph (B), an employee that declines a transfer shall be entitled to an annuity under section 8336(d) or section 8414(b)(1) of title 5, United States Code.

(D) Any reduction-in-force or reorganization that occurs after the one-year period specified in section 404(4) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 shall be conducted in accordance with chapters 33 and 35 of title 5, United States Code, and the procedures promulgated pursuant to them. Any such reduction-in-force or reorganization shall be deemed a "major reorganization" or a "major reduction-in-force" for purposes of section 8336(d)(2) and section 8414(b)(1)(B) of title 5, United States Code, and any separated employee shall be entitled to severance payments in accordance with section 5595 of title 5, United States Code.

(d) TRANSFER OF PROPERTY.—Effective upon enactment of this Act, all assets and liabilities of the Oversight Board on the day before enactment of this Act shall be transferred to the Resolution Trust Corporation.

SEC. 104. TECHNICAL AND CONFORMING AMENDMENTS.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) is amended—

(1) in section 21 by striking "Oversight Board" each place it appears and inserting "Secretary of the Treasury"; and

(2) in section 21B—

(A) by striking "Oversight Board" each place it appears and inserting "Secretary of the Treasury"; and

(B) in subsection (k), by striking paragraph (7) and redesignating paragraphs (8) through (10) as paragraphs (7) through (9), respectively.

SUBTITLE B—DISPOSITION OF PROPERTY BY RESOLUTION TRUST CORPORATION

SEC. 201. SALES RECORDS.

Section 21A(a)(12)(D)(ii) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(12)(D)(ii)), as redesignated, is amended by striking the last sentence and inserting the following: "If the Corporation sells a property located in a distressed area for less than the minimum disposition price, it shall maintain a written record of the reasons for its decision.".

SEC. 202. SALE OF CONDOMINIUM PROPERTIES.

(a) IN GENERAL.—Section 21A(b)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(2)), as redesignated, is amended by adding at the end the following new subparagraph:

"(C) OFFERS TO SELL CONDOMINIUM PROPERTIES.—Within a reasonable period of time after acquiring title to an eligible condominium property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property. Each clearinghouse shall make such information available, upon request, to eligible multifamily purchasers. The Corporation shall allow eligible multifamily purchasers reasonable access to an eligible condominium property for purposes of inspection. For the 3 month period following the date on which the Corporation makes an eligible condominium property available for sale, the Corporation shall sell the property to—

"(i) qualifying households, or

"(ii) qualifying multifamily purchasers that agree to—

"(I) make the property available for occupancy by, and maintain it as affordable for, lower-income families for the remaining useful life of such property, or

"(II) make the property available for purchase by lower-income families.

The restrictions described in subclause (I) of the preceding sentence shall be contained in the deed or other recorded instrument. If upon the expiration of the 3 month period, no qualifying household or eligible multifamily purchaser has made a bona fide offer to purchase the eligible condominium property, the Corporation may offer to sell the property to any purchaser.".

(b) DEFINITION OF ELIGIBLE CONDOMINIUM PROPERTY.—Section 21A(b)(9) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(9)), as redesignated, is amended by inserting at the end the following new subparagraph:

"(Q) ELIGIBLE CONDOMINIUM PROPERTY.—The term "eligible condominium property" means a condominium unit as defined in section 604(6) of the Housing and Community Development Act of 1980—

"(i) to which the Corporation acquires title; and

"(ii) that has an appraised value that does not exceed the applicable dollar amount set forth in section 203(b)(2) of the National Housing Act (without regard to any increase of such amount for high-cost areas).".

SEC. 203. ANTI-SPECULATION PROVISIONS.

(a) IN GENERAL.—Section 21A(b)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(2)), as redesignated, is amended by adding at the end the following new subparagraph:

"(D) ANTI-SPECULATION PROVISIONS.—If a property sold under this paragraph to a qualifying household is resold during the two years following the sale under this paragraph, any profit from the resale above the original sale price, increased for inflation and owner improvements, will be paid to the Corporation or its successor according to the following formula:

"(i) 75 percent of the profit will be paid to the Corporation if the property is sold during the first year following the sale under this paragraph; and

"(ii) 50 percent of the profit will be paid to the Corporation if the property is sold during the second year following the sale under this paragraph.".

(b) QUALIFYING HOUSEHOLD.—Section 21A(b)(9)(K) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(9)(K)), as redesignated, is amended—

(1) by redesignating clause (ii) as clause (iii);

(2) in clause (i), by striking "principle residence;" and inserting "principal residence for a minimum of twelve months; (ii) who certifies in writing that the household intends to occupy the property as a principal residence for a minimum of twelve months;"; and

(3) in clause (iii), as redesignated, by striking "adjusted".

SEC. 204. INCLUSION OF MULTIFAMILY PROPERTY UNDER CONSERVATORSHIP IN AFFORDABLE HOUSING PROGRAM AND CONTINUATION OF PROGRAM FOR SINGLE FAMILY PROPERTY.

(a) CONTINUATION OF AFFORDABLE HOUSING PROGRAM FOR ELIGIBLE SINGLE FAMILY PROPERTY UNDER CONSERVATORSHIP.—Section 203 of the Resolution Trust Corporation Funding Act of 1991 is amended by inserting "(b)" after "sections 201".

(b) DEFINITION OF CORPORATION.—Section 21A(b)(9)(C) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(9)(C)), as redesignated, is amended to read as follows:

"(C) CORPORATION.—The term 'Corporation' means the Resolution Trust Corporation acting in its corporate capacity, acting in its capacity as an operating conservator, or acting in its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation).".

SEC. 205. DEFINITION OF INCOME FOR ELIGIBILITY DETERMINATION UNDER THE SINGLE FAMILY AFFORDABLE HOUSING DISPOSITION PROGRAM.

Section 21A(b)(9) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(9)), as redesignated, is amended by adding at the end the following new subparagraph:

"(R) INCOME.—The term 'income' has the same meaning as such term has under section 3 of the United States Housing Act of 1937.".

SEC. 206. PUBLIC DISCLOSURE OF TRANSACTIONS.

Section 21A(j)(2)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(j)(2)(A)), as redesignated, is amended—

(1) by striking "and" at the end of clause (i);

(2) by striking the period at the end of clause (ii) and inserting "; and"; and

(3) by adding at the end the following:

"(iii) the identity of the accepted offeror and the terms of the accepted offer for sales of assets in excess of $250,000, by publication in the Federal Register no later than 30 days after the date of the transaction. For purposes of this clause, the term 'assets' includes any assets controlled or acquired by the Corporation as a result of its appointment as a conservator or a receiver.".

SEC. 207. OPERATION OF BRANCH FACILITIES BY MINORITIES AND WOMEN.

(a) ACQUISITION OF BRANCH FACILITIES FROM THE RESOLUTION TRUST CORPORATION.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by adding at the end the following new subsection:

"(p) ACQUISITION OF BRANCH FACILITIES IN MINORITY NEIGHBORHOODS.—

"(1) IN GENERAL.—In the case of any savings association for which the Corporation has been appointed conservator or receiver, the Corporation shall make available any branch of such association which is located in any predominantly minority neighborhood to any minority depository institution or women's depository institution on the following terms:

"(A) The branch shall be made available on a rent-free lease basis for not less than 5 years.

"(B) Of all expenses incurred in maintaining the operation of the facilities in which such branch is located, the institution shall be liable only for the payment of applicable real property taxes, real property insurance, and utilities.

"(C) The lease may provide an option to purchase the branch during the term of the lease.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) MINORITY DEPOSITORY INSTITUTION.—The term 'minority depository institution' means a depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)—

"(i) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

"(ii) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

"(B) WOMEN'S DEPOSITORY INSTITUTION.—The term 'women's depository institution' means a depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)—

"(i) more than 50 percent of the ownership or control of which is held by 1 or more women;

"(ii) more than 50 percent of the net profit or loss of which accrues to 1 or more women; and

"(iii) more than 50 percent of the senior management positions of which are held by women.

"(C) MINORITY.—The term 'minority' has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(D) The term 'predominantly minority neighbordhood' shall be defined by regulation by the Corporation.".

(b) COMMUNITY REINVESTMENT CREDIT FOR DEPOSITORY INSTITUTIONS PROVIDING ASSISTANCE.—The Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) is amended by adding at the end the following new section:

"SEC. 808. OPERATION OF BRANCH FACILITIES BY MINORITIES AND WOMEN.

"(a) IN GENERAL.—In the case of any depository institution which donates, sells on favorable terms (as determined by the appropriate Federal financial supervisory agency), or makes available on a rent-free basis any branch of such institution which is located in any predominantly minority neighborhood to any minority depository institution or women's depository institution, the amount of the contribution or the amount of the loss incurred in connection with such activity shall be treated as meeting the credit needs of the institution's community for purposes of this title.

"(b) DEFINITIONS.—For purposes of this section—

"(1) MINORITY DEPOSITORY INSTITUTION.—The term 'minority depository institution' means a depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)—

"(A) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and

"(B) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals.

"(2) WOMEN'S DEPOSITORY INSTITUTION.—The term 'women's depository institution' means a depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)—

"(A) more than 50 percent of the ownership or control of which is held by 1 or more women;

"(B) more than 50 percent of the net profit or loss of which accrues to 1 or more women; and

"(C) more than 50 percent of the senior management positions of which are held by women.

"(3) MINORITY.—The term 'minority' has the meaning given to such term by section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

"(4) The term 'predominantly minority neighborhood' shall be defined by regulation by the Corporation.".

SEC. 208. SELLER FINANCING PROCEDURES.

Section 21A(a)(12)(F) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(12)(F)), as redesignated, is amended by adding at the end the following: "Within 180 days from the date of enactment of the Resolution Trust Corporation Reform Act of 1991, the Corporation shall conduct a review of its seller financing procedures and endeavor to arrange appropriate financing to States, municipalities and other political subdivisions seeking to acquire real property assets of the institutions subject to the Corporation's jurisdiction.".

SEC. 209. UTILIZATION OF COMPETITIVE BIDDING METHODS.

(a) COMPETITIVE BIDDING.—Section 21A(a)(12) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(12)), as redesignated, is amended by inserting at the end the following new subparagraphs:

"(H) UTILIZATION OF COMPETITIVE BIDDING METHODS.—In reviewing the Corporation's disposition of any real estate owned, any non-securitizable loan, or any other illiquid asset on a bulk sale basis or on an individual basis, the chief executive officer of the Corporation shall assure that all practicable competitive bidding, auction, and other marketing mechanisms are utilized to the maximum extent possible to maintain open competitive bidding.

"(I) ACTIVELY MARKETED ASSETS.—When a bona fide offer has been received and is under

consideration by the Corporation in connection with the disposition of any real estate owned, any non-securitizable loan, or any other illiquid asset, any such asset shall be treated by the Corporation as an asset that is being actively marketed and is ineligible for disposition on a bulk sale basis or as part of an asset portfolio sale."

(b) REPORT ON AGE OF THE CORPORATION'S PORTFOLIO.—The chief executive officer of the Corporation shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance, and Urban Affairs of the House of Representatives by March 31, 1992, a comprehensive review and summary of the amount of time that assets held by the Corporation from the date of the Corporation's creation through December 31, 1991, have been retained in the Corporation's portfolio.

SEC. 210. DISPOSITION OF SIGNIFICANT PROPERTY.

(a) IN GENERAL.—Section 21A(a)(12) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(12)), as redesignated, is amended—

(1) in the second to last sentence of subparagraph (F), by striking all that follows "thereafter" and inserting "and shall designate the properties in the inventory identified by the Secretary of the Interior pursuant to subparagraph (I) as having natural, cultural, recreational, or scientific value of special significance."; and

(2) by adding at the end the following new subparagraph:

"(J) IDENTIFICATION, DISPOSITION, AND PROTECTION OF PROPERTIES WITH NATURAL, CULTURAL, RECREATIONAL, OR SCIENTIFIC VALUE OF SPECIAL SIGNIFICANCE.—

"(i) PURPOSE.—The purpose of this subparagraph is to provide public and private entities with an adequate opportunity and incentive to acquire real estate with natural, cultural, recreational, or scientific value of special significance in order to preserve the character of such real estate.

"(ii) IDENTIFICATION OF PROPERTIES.—Not later than 60 days after the date on which the Corporation submits to the Secretary of the Interior any list of real property assets of institutions subject to the jurisdiction of the Corporation, the Secretary of the Interior shall—

"(I) review the real property assets of institutions contained on such list subject to the jurisdiction of the Corporation; and

"(II) identify properties having natural, cultural, recreational, or scientific value of special significance.

The Secretary of the Interior shall implement procedures by regulation, which shall include categorical exemptions for certain real property, in consultation with the Corporation, to identify properties and to ensure that the inventory is examined in a cost-effective manner.

"(iii) NATURAL, CULTURAL, RECREATIONAL, AND SCIENTIFIC VALUE DEFINED.—For purposes of identifying property having natural, cultural, recreational, or scientific value of special significance, the Secretary of the Interior shall define these terms. In defining these terms, the Secretary shall include—

"(I) property that receives protection under existing Federal laws and executive orders due to any unique natural, cultural, recreational, or scientific characteristics of such property; and

"(II) property that is described in clause (iv).

"(iv) PROPERTY HAVING NATURAL VALUE OF SPECIAL SIGNIFICANCE.—For purposes of this subparagraph, property having natural value of special significance includes property that directly contributes to—

"(I) the protection of endangered or threatened plants or animals;

"(II) the protection or restoration of wetlands, as described in the Emergency Wetlands Resources Act of 1986 and other wetlands identified under the authority of the North American Wetlands Conservation Act of 1989; or

"(III) the protection of land that is contiguous to or an inholding in a federally owned or State-owned conservation area or an area legally designated for acquisition for conservation purposes by a Federal or State agency.

"(v) ESTABLISHMENT OF INFORMATION CLEARINGHOUSE.—

"(I) After soliciting comments on such selection from public agencies and nonprofit organizations, including comments on whether the clearinghouse should be required to maintain a mailing list of interested agencies and organizations to be notified, the Corporation shall select a clearinghouse to be responsible for disseminating information relating to properties with natural, cultural, recreational, or scientific value of special significance. The clearinghouse should be organized to disseminate information according to the geographic location of the property rather than the geographic location of the financial institution which had controlled the property.

"(II) After the Corporation has selected a clearinghouse, the Secretary of the Interior shall provide the clearinghouse with a list of real estate that is available for sale and that has been identified as having natural, cultural, recreational, or scientific value of special significance.

"(vi) INVENTORY PUBLICATION; NOTIFICATION REQUIREMENTS.—

"(I) UPDATING OF RECORDS.—The Corporation shall update its inventory records to reflect the identification of properties by the Secretary of the Interior in accordance with clause (ii) not more than 30 days after the Corporation is notified of the identification.

"(II) INVENTORY PUBLICATION.—The publication by the Real Estate Asset Division of the Corporation of a revised list of the Corporation's inventory of real property assets, pursuant to subparagraph (F), shall include a designation of all properties identified by the Secretary of the Interior as having special significance under clause (ii).

"(vii) PROPERTY MAINTENANCE AND MANAGEMENT.—The Corporation shall maintain any property identified by the Secretary of the Interior as having special significance under clause (ii) in a manner consistent with the preservation of the property's special significance. Nothing contained in this subparagraph shall be construed to require the Corporation to restore, rehabilitate, or reclaim any such property, or to undertake any similar activities. The Corporation may employ, on a reimbursable basis, the services of any qualified individual to provide technical assistance and to maintain and manage the property during the period that the property is subject to the jurisdiction or control of the Corporation.

"(viii) TRANSFER OF INVENTORY LANDS.—Notwithstanding any other provision of this Act, the Corporation may in its sole discretion transfer property identified by the Secretary under clause (ii), or interests therein, at 50 percent of market value, as determined in accordance with the Corporation's established methods of appraisal or valuation, to any public agency or nonprofit organization if the agency or organization agrees to protect and maintain the special nature of the property by deed or other recorded instrument which is binding upon successors in interest to the property. If any such property sold ceases to be used by the public agency or nonprofit organization in the manner agreed to under this clause, all rights, title, and interest in and to the covered property shall revert to the United States.

"(ix) TRANSFER TO FEDERAL OR STATE AGENCIES.—Notwithstanding any other provision of this Act, at the request of the Secretary of the Interior, the Corporation shall transfer real property, or interests therein, without reimbursement, to any Federal or State agency for conservation purposes if the transfer of such property would directly contribute to—

"(I) the protection of endangered or threatened plants or animals;

"(II) the protection or restoration of wetlands as described in the Emergency Wetlands Resources Act of 1986 and other wetlands identified under the authority of the North American Wetlands Conservation Act of 1989; or

"(III) the protection of land that is contiguous to or an inholding in a federally owned or State-owned conservation area or an area legally designated for acquisition by a Federal or State agency.

Any such request by the Secretary of the Interior shall be made within 120 days from the date on which the Corporation submits to the Secretary of the Interior any list of real property assets of institutions subject to the jurisdiction of the Corporation.

"(x) TRANSFER OF PROPERTY TO PUBLIC AGENCIES OR NONPROFIT ORGANIZATIONS.—

"(I) RIGHT OF FIRST OFFER.—For a 45-day period beginning on the date that the clearinghouse receives the list of real estate from the Secretary of the Interior pursuant to clause (v), the Corporation shall not offer to sell property on the list to any entity other than a public agency or nonprofit organization described in clause (viii).

"(II) NOTICE OF INTEREST.—If a public agency or nonprofit organization submits a timely notice of interest in the property, the Corporation may not sell or otherwise transfer the property during the 90-day period beginning upon the expiration of the initial 45-day period, except to such agency or nonprofit organization under clause (viii).

"(III) NO NOTICE OF INTEREST.—If the Corporation does not receive a timely notice of interest in the property from a public agency or nonprofit organization, the Corporation may sell or otherwise transfer the property to any purchaser or transferee.

"(xi) UNDEVELOPED LAND.—Pending the determination by the Secretary of the Interior as to whether property has natural, cultural, recreational, or scientific value of special significance under clause (ii), the Corporation shall not offer to sell any parcel of undeveloped land larger than 5 acres except to a public agency or nonprofit organization that agrees to comply with the condition contained in clause (viii) or to a Federal or State agency under clause (ix). If the Secretary of the Interior fails to make a determination under clause (ii) with respect to any such parcel of land larger than 5 acres within 120 days from the date on which the Corporation has submitted a list of property containing such parcel of undeveloped land larger than 5 acres, the Corporation shall have the right to sell or otherwise transfer any such parcel. Nothing contained in this section shall be construed to prohibit the Corporation from selling or otherwise transferring any property other than undeveloped land larger than 5 acres pending a deter-

mination of the Secretary of the Interior under clause (ii).

"(xii) LIMITATION OF PRIVATE RIGHT OF ACTION.—The provisions of this subparagraph, or any failure by the Corporation to comply with the provisions, may not be used by any person to attach or defeat title to property after it is conveyed by the Corporation. The preceding sentence shall not apply in the case of a failure by any successor in interest to property conveyed or transferred by the Corporation under this subparagraph, to comply with clause (viii).

"(xiii) ADMINISTRATIVE PROVISIONS.—

"(I) The Corporation shall not reimburse or otherwise compensate the Secretary of the Interior for the costs and expenses incurred by the Secretary in carrying out his responsibilities under this subparagraph, except as provided in clause (vii).

"(II) The requirements imposed upon the Corporation by this subparagraph shall become effective upon the date on which final regulations adopted by the Secretary of the Interior pursuant to clause (ii)(II) take effect, or 90 days after the date of enactment of the Resolution Trust Corporation Reform Act of 1991, whichever is later. The Secretary shall issue regulations pursuant to clause (ii)(II) not later than 120 days after the date of enactment of this Act.".

(b) AMENDMENTS TO THE COASTAL BARRIER IMPROVEMENT ACT.—Section 10 of the Coastal Barrier Improvement Act of 1990 (12 U.S.C. 1441a–3) is amended—

(1) in the section heading, by striking "RTC AND";

(2) in subsections (a)(1) and (b)(1), by striking "Resolution Trust Corporation and the";

(3) in subsection (a)(1), by striking "each submit" and inserting "submit";

(4) in subsection (a)(2), by striking "each corporation concerned" and inserting "the Federal Deposit Insurance Corporation";

(5) in subsections (a)(1), (b)(1), (b)(2), (b)(3), and (b)(4), by striking "the corporation concerned" each time it appears and by substituting "the Federal Deposit Insurance Corporation";

(6) in subsection (b)(3), by striking "a corporation concerned" and by substituting "the Federal Deposit Insurance Corporation";

(7) in subsection (c), by striking paragraph (1) and by redesignating paragraphs (2), (3), and (4), as paragraphs (1), (2), and (3), respectively; and

(8) by striking subsection (c)(1)(A), as redesignated, and inserting the following:

"(A) to which the Federal Deposit Insurance Corporation has acquired title in its corporate capacity or which was acquired by the former Federal Savings and Loan Insurance Corporation in its corporate capacity; and".

SEC. 211. OFFICE OF DISPUTE RESOLUTION.

Section 21A(a)(12) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(12)), as redesignated, is amended by adding at the end the following new subparagraph:

"(K) OFFICE OF DISPUTE RESOLUTION.—The Corporation shall establish an Office of Dispute Resolution, which shall have only the following duties:

"(i) To act as an impartial mediator to resolve disputes that may arise between asset management and disposition contractors and owners of property subject to loans formerly held by the Corporation.

"(ii) To work with the parties described in clause (i) for the purpose of settling disputes.".

SEC. 212. INTEREST PAID BY INSTITUTIONS IN CONSERVATORSHIP.

Section 21A(a)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(4)), as redesignated, is amended—

(1) by striking "Except as provided" and inserting the following:

"(A) IN GENERAL.—Except as provided"; and

(2) by adding at the end the following new subparagraph:

"(B) RESTRICTION ON INTEREST RATE PAID.—Any insured depository institution for which the Corporation is the conservator may not pay a rate of interest on such funds which, at the time that such funds are accepted, significantly exceeds the rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area.".

SEC. 213. MANAGEMENT AND DISPOSITION OF PROPERTY BY LOCAL OFFICE WHICH IS CLOSEST TO THE PROPERTY.

Section 21A(a)(12) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)(12)), as redesignated, is amended by adding at the end the following new subparagraph:

"(L) REAL ESTATE MANAGEMENT AND DISPOSITION.—The Corporation shall establish a procedure under which—

"(i) real estate assets of any institution described in paragraph (3)(A) shall be managed and disposed of by the Corporation through the office of the Corporation which is closest to the location of any such real estate asset; and

"(ii) the management and disposition of assets pursuant to clause (i) shall be properly accounted for to the office of the Corporation which is responsible for administering the receivership of the institution referred to in such clause, consistent with the fiduciary responsibility of the Corporation to the creditors of the institution.".

SUBTITLE C—MISCELLANEOUS

SEC. 301. SUSPENSION OF FUNDING UPON THE FAILURE TO PROVIDE AN AUDITED FINANCIAL STATEMENT.

(a) FINANCIAL STATEMENT FOR FISCAL YEAR 1990.—If no financial statement of the Corporation for fiscal year 1990 which has been independently audited by a certified public accountant has been submitted to the Congress by the end of fiscal year 1991, no amount provided to the Corporation under section 21A(i) of the Federal Home Loan Bank Act shall be available for obligation until such audited financial statement has been submitted to the Congress.

(b) FINANCIAL STATEMENT FOR FISCAL YEAR 1991.—If no financial statement of the Corporation for fiscal year 1991 which has been independently audited by a certified public accountant has been submitted to the Congress by the end of fiscal year 1992, no amount provided to the Corporation under section 21A(i) of the Federal Home Loan Bank Act shall be available for obligation until such audited financial statement has been submitted to the Congress.

(c) INDEPENDENT AUDIT PROVISION.—An audit of a financial statement of the Corporation which has been conducted by the Comptroller General of the United States, using the services of certified public accountants, shall be treated as an independent audit for purposes of subsections (a) and (b).

SEC. 302. UNINSURED DEPOSITORS NOT COVERED.

Section 21A(a) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(a)), as redesignated, is amended by adding to the end the following new paragraph:

"(15) DEPOSIT INSURANCE FUNDS AVAILABLE FOR INTENDED PURPOSE ONLY.—

"(A) IN GENERAL.—The Corporation may not take action, directly or indirectly, with respect to any institution described in paragraph (3)(A) that would have the effect of increasing losses to the Corporation by protecting—

"(i) depositors for more than the insured portion of deposits (determined without regard to whether such institution is liquidated); or

"(ii) creditors other than depositors.

"(B) PURCHASE AND ASSUMPTION TRANSACTIONS.—No provision of this paragraph shall be construed as prohibiting the Corporation from allowing any person who acquires any assets or assumes any liabilities of any institution described in paragraph (3)(A) for which the Corporation has been appointed conservator or receiver to acquire uninsured deposit liabilities of such institution so long as the Corporation does not incur any loss with respect to such deposit liabilities in an amount greater than the loss which would have been incurred with respect to such liabilities if the institution had been liquidated.".

SEC. 303. DISCLOSURE OF CERTAIN RESOLUTION TRUST CORPORATION SALARIES.

Section 21A(j)(5)(B)(iii) of the Federal Home Loan Bank Act (1441a(j)(5)(B)(iii)), as redesignated, is amended by adding before the period the following: ", and the name of each person acting on behalf of the Corporation and the Federal Deposit Insurance Corporation paid at a rate in excess of the rate for level V of the Executive Schedule during such period, and the amount of compensation paid such employees during the reporting period".

SEC. 304. WHISTLEBLOWER PROTECTION.

Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by adding at the end the following new subsection:

"(q) RTC AND RTC CONTRACTOR EMPLOYEE PROTECTION REMEDY.—

"(1) PROHIBITION AGAINST DISCRIMINATION.—The Corporation and any person who is performing, directly or indirectly, any function or service on behalf of the Corporation may not discharge or otherwise discriminate against any employee (including any employee of the Federal Deposit Insurance Corporation being utilized by the Corporation) with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Corporation, the Attorney General, or any appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) regarding any possible violation of any law or regulation by the Corporation or such person or any director, officer, or employee of the Corporation or the person.

"(2) ENFORCEMENT.—Any employee or former employee who believes that such employee has been discharged or discriminated against in violation of paragraph (1) may file a civil action in the appropriate United States district court before the end of the 2-year period beginning on the date of such discharge or discrimination.

"(3) REMEDIES.—If the district court determines that a violation has occurred, the court may order the Corporation or the person which committed the violation to—

"(A) reinstate the employee to the employee's former position;

"(B) pay compensatory damages; or

"(C) take other appropriate actions to remedy any past discrimination.

"(4) LIMITATION.—The protections of this section shall not apply to any employee who—

"(A) deliberately causes or participates in the alleged violation of law or regulation; or

"(B) knowingly or recklessly provides substantially false information to the Corporation, the Attorney General, or any appropriate Federal banking agency.".

SEC. 305. GAO STUDY OF PRIVATIZATION OF RESOLUTION TRUST CORPORATION FUNCTIONS.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of—

(1) the feasibility of transferring all or a substantial portion of the functions being performed by the Corporation as of the date of enactment of this Act to the private sector;

(2) the most efficient methods for accomplishing the transfer; and

(3) the potential benefits of the transfer to the Corporation and the United Sates Government.

(b) REPORT.—The Comptroller General shall submit a report to the Congress before the end of the 6-month period beginning on the date of the enactment of this Act containing—

(1) the findings and conclusions of the Comptroller General in connection with the study conducted under subsection (a); and

(2) such recommendations for legislative or administrative action as the Comptroller General may determine to be appropriate.

ADAMS AMENDMENT NO. 1353

Mr. ADAMS proposed an amendment to the bill S. 543, supra, as follows:

On page 395, after line 25, insert the following new section:

SEC. 308. CONSIDERATION OF DISPLACED WORK FORCE.

(a) FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended in the second sentence by inserting ", the impact on employees of the existing and proposed institutions, including whether the institutions plan to provide reasonable notice to employees well in advance of any layoffs, whether the institutions plan to make any effort to ensure that laid-off employees receive priority in filling future vacancies, whether the institutions will provide specific severance benefits for laid-off employees, and whether and for how long benefits such as health and life insurance and pensions will be continued for laid-off employees," before "and the convenience and needs of the community".

(b) BANK HOLDING COMPANY ACT AMENDMENT.—Section 3(c) of the Bank Holding Company Act of 1956 is amended in the second sentence by inserting "the impact on employees of the existing and proposed institutions, including whether they plan to provide reasonable notice to employees well in advance of any layoffs, whether the institutions plan to make any effort to ensure that laid-off employees receive priority in filling future vacancies, whether the institutions will provide specific severance benefits for laid-off employees, and whether and for how long benefits such as health and life insurance and pensions will be continued for laid-off employees," before "and the convenience and needs of the community".

LOTT AMENDMENT NO. 1354

(Ordered to lie on the table.)

Mr. LOTT submitted an amendment intended to be proposed by him to the bill S. 543, supra, as follows:

At page 133, after line 5, add the following:

"(4) APPLICABILITY OF ACCOUNTING PRINCIPALS.—This subsection shall apply only to reports and statements, including Reports of Condition and Income, filed with a Federal banking agency in connection with the supervision of an insured depository institution. Accounting principals for insured depository institutions prescribed by a Federal banking agency shall not apply to general purpose financial statements that purport to have been prepared in accordance with generally accepted financial statements.

McCAIN AMENDMENT NO. 1355

Mr. MCCAIN proposed an amendment to the bill S. 543, supra, as follows:

On page 207, line 8, before the period, insert the following: "for deposits not described in paragraph (3) and $100,000 for deposits described in paragraph (3)".

MURKOWSKI AMENDMENT NO. 1356

Mr. GARN (for Mr. MURKOWSKI) proposed an amendment to the bill S. 543, supra, as follows:

On page 416, line 1, strike all through page 487, line 13.

ADDITIONAL STATEMENTS

TRIBUTE TO COL. HAROLD W. NUTT

• Mr. LAUTENBERG. Mr. President, I rise today to honor Col. Harold W. Nutt who is celebrating his retirement on the first of December.

Colonel Nutt is a dedicated individual who has devoted many years of public service to the military and to the New Jersey Department of Defense. He has served as a military aid on the staffs of five successive Governors of New Jersey spanning 35 years.

As a special assistant to the adjutant general from 1983 to the present, he served as surrogate for the adjutant general, as a liaison to the military, Government, business, and the community at large. Colonel Nutt performed protocol duties, chaired the Governor's special events planning committee and served as the executive director of the New Jersey Committee for Employer Support of the National Guard and Reserve. In addition, he served as chair and director of the New Jersey National Guard Militia Museum Board of Governors.

Colonel Nutt also served from 1983 to 1988 at the New Jersey Department of Defense in Trenton, NJ. At the new Jersey DOD, he served as the deputy commander, director and inspector general. During the previous 5 years, he was employed by the New Jersey Military Academy and National Guard Training Center in Sea Girt where he held the office of commandant/station commander, Chief Logistics Bureau, and Assistant Chief of the Logistics Bureau. During the years 1958 to 1969 Colonel Nutt served as tactical officer, executive officer, operations officer, director, and deputy director of the New Jersey Military Academy in Sea Girt.

Beyond Colonel Nutt's extensive professional experience in the military, he has also devoted much of his personal time to the community at large. He has given many selfless hours to community service and worthwhile philanthropic organizations, often in leadership positions. His various affiliations range from serving as a member of the National Trust for Historic Foundation to being the director for Project Freedom, the Nottingham Recreation Center for the Physically Limited. Colonel Nutt has also volunteered much of his valuable time to Lawrence Township. As chairman of the Lawrence Health Fair, member of Operation Historical Exchange Program and member of Lawrence Historical Society, he has a lasting contribution to the community.

Mr. President, Colonel Nutt has given over three decades of service to the military and has enthusiastically committed himself to community service. I applaud Colonel Harold Nutt for his tireless efforts to better the community and for his valued career as a military public servant.

I join Colonel Nutt's friends and colleagues as they celebrate his retirement. I wish him and his family my warmest wishes for continued health and happiness in the future.•

SENATE QUARTERLY MAIL COSTS

• Mr. FORD. Mr. President, in accordance with section 318 of Public Law 101-520, I am submitting the summary tabulations of Senate mass mail costs for the quarter ending September 30, 1991, to be printed in the RECORD, along with the quarterly statement from the U.S. Postal Service setting forth the Senate's total postage costs for the quarter.

The information continues to reflect the frugality of the Senate in its spending on official mail. The Senate's expenditures for fiscal year 1991 totaled $11,744,034, which is $18,105,966 less than the $29,850,000 appropriated.

The tabulations follow:

SENATE QUARTERLY MASS MAIL VOLUMES AND COSTS FOR THE QUARTER ENDING SEPT. 30, 1991

Senators	Total pieces	Pieces per capita	Total cost	Cost per capita
Adams	240,480	0.04941	$34,362.34	$0.00706
Akaka				
Baucus	24,200	.03029	4,350.42	.00544
Bentsen	1,373,500	.08086	243,933.37	.01436
Biden	299,450	.44951	46,229.68	.06940
Bingaman	65,750	.04340	11,647.46	.00769
Bond	101,869	.01991	69,966.44	.01367
Boren				
Bradley				
Breaux	166,891	.03955	26,204.68	.00621
Brown	54,200	01645	7,445.79	.00226
Bryan	265,919	.22126	58,944.46	.04905
Bumpers				
Burdick	96,000	.15028	16,744.44	.02621

SENATE QUARTERLY MASS MAIL VOLUMES AND COSTS FOR THE QUARTER ENDING SEPT. 30, 1991—Continued

Senators	Total pieces	Pieces per capita	Total cost	Cost per capita
Burns	68,500	.08573	12,021.84	.01504
Byrd				
Chafee				
Coats	122,126	.02203	24,240.05	.00437
Cochran				
Cohen	73,329	.05972	10,911.53	.00889
Conrad	267,500	.41875	41,948.20	.06567
Craig	81,150	.08061	13,345.91	.01326
Cranston	2,542,450	.08543	434,381.35	.01460
D'Amato	3,282,623	.18246	541,314.15	.03009
Danforth	44,600	.00872	6,123.61	.00120
Daschle	46,040	.06615	7,743.81	.01084
DeConcini	1,647,000	.44936	258,502.63	.07053
Dixon	1,528,200	.13369	238,205.05	.02084
Dodd	472,350	.14370	77,998.92	.02373
Dole				
Domenici				
Durenberger	147,900	.03380	29,713.74	.00679
Exon				
Ford				
Fowler	185,600	.02865	26,425.88	.00408
Garn				
Glenn				
Gore				
Gorton	139,735	.02871	24,057.98	.00494
Graham	427,400	.03303	71,775.31	.00555
Gramm	359,800	.02118	62,260.56	.00367
Grassley	534,980	.19266	110,182.71	.03968
Harkin	2,750			
Hatch	2,750	.00160	538.16	.00031
Hatfield				
Heflin	644,550	.15952	101,628.33	.02515
Helms				
Hollings				
Inouye				
Jeffords	86,600	.15388	11,674.37	.02074
Johnston	508,005	.12038	80,486.38	.01907
Kassebaum				
Kasten	580,240	.11862	94,692.80	.01936
Kennedy				
Kerrey	147,350	.09335	21,424.48	.01357
Kerry	13,765	.00229	12,032.88	.00200
Kohl				
Lautenberg	1,650,750	.21355	258,606.14	.03345
Leahy	33,350	.05926	6,376.60	.01133
Levin	2,457	.00026	551.38	.00006
Lieberman	134,827	.04102	28,361.48	.00863
Lott				
Lugar	157,550	.02842	25,983.54	.00469
Mack	86,832	.00671	18,013.67	.00139
McCain	114,452	.03123	20,715.07	.00565
McConnell				
Metzenbaum				
Mikulski				
Mitchell				
Moynihan	20,350	.00113	3,936.33	.00022
Murkowski	222,100	.40379	39,481.00	.07178
Nickles	66,632	.02118	14,463.24	.00460
Nunn				
Packwood	316,991	.11153	56,090.32	.01973
Pell				
Pressler	207,852	.29864	36,906.75	.05303
Pryor	7,750	.00330	1,060.33	.00045
Reid	108,385	.09018	19,106.77	.01590
Riegle	102,280	.01100	17,318.13	.00186
Robb				
Rockefeller	4,992	.00278	4,487.80	.00250
Roth	68,408	.10269	12,131.23	.01821
Rudman				
Sanford	10,400	.00157	2,073.21	.00031
Sarbanes	89,100	.01863	13,724.94	.00287
Sasser				
Seymour	481,000	.1616	77,863.41	.00262
Shelby				
Simon	1,105,400	.09671	172,469.73	.01509
Simpson	15,300	.03373	2,176.76	.00480
Smith				
Specter	1,047,950	.08820	149,926.83	.01262
Stevens				
Symms	277,620	.27576	51,352.55	.05101
Thurmond				
Wallop	6,100	.01345	1,429.61	.00315
Warner				
Wellstone	802,300	.18338	126,086.58	.02882
Wirth	355,672	.10796	51,481.68	.01563
Wofford				

Other offices	Pieces	Cost
The Vice President		
The President pro-tempore		
The Majority Leader		
The Minority Leader		
The Assistant Majority Leader		
The Assistant Minority Leader		
Secretary of Majority Conference		
Secretary of Minority Conference		
Agriculture Committee		
Appropriations Committee		
Armed Services Committee		
Banking Committee		
Budget Committee		
Commerce Committee		
Energy Committee		
Environment Committee		
Finance Committee		
Foreign Relations Committee		
Governmental Affairs Committee		
Judiciary Committee		
Labor Committee		
Rules Committee		
Small Business Committee		
Veterans Affairs Committee		
Ethics Committee		
Indian Affairs Committee	2,050	$1,077.64
Intelligence Committee		
Aging Committee		
Joint Economic Committee		
Joint Committee on Printing		
Democratic Policy Committee		
Democratic Conference		
Republican Policy Committee		
Republican Conference		
Legislative Counsel		
Legal Counsel		
Secretary of the Senate		
Sergeant at Arms		
Narcotics Caucus		

U.S. POSTAL SERVICE,
DEPARTMENT OF THE CONTROLLER,
Washington, DC, November 8, 1991.

Hon. WENDELL H. FORD,
Chairman, Committee on Rules and Administration, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Detailed data on franked mail usage by the U.S. Senate for the fourth quarter, Fiscal Year 1991, is enclosed. Total postage and fees for the quarter is $5,065,667.

A summary of Senate franked mail usage based upon actual data for the four quarters of Fiscal Year 1991 is as follows:

Volume	59,780,774
Revenue per piece	$0.1965
Revenue	$11,744,034.00
Provisional payments (Oct. 1990 to Jan. 1991)	$10,000,000.00
Deficiency in provisional payments	$1,744,034.00

Also enclosed is a copy of the comparable report for the U.S. House of Representatives.

If you or your staff have any questions, please call Tom Galgano of my staff on 202–268–3255.

Sincerely,

JAMES S. STANFORD,
General Manager, Official and International Mail Accounting Division, Office of Accounting, Washington, DC.

SENATE FRANKED MAIL, POSTAL QUARTER IV, FISCAL YEAR 1991

Subcategories	Pieces	Rate	Amount
1. Letters: 1st Class (total)	2,585,923	$0.2900	$749,918
2. Flats: 1st class	128,782	1.1142	143,489
3. Parcels:			
Priority-up to 11 oz			
Priority-over 11 oz	20,910	4.6778	97,813
4th class—regular	35,024	4.1202	144,306
Total	55,934	4.3287	242,119
4. Orange bag pouches:			
1st class	198,869	.3866	76,883
Priority-up to 11 oz	4,499	2.9000	13,047
Priority—over 11 oz	11,645	4.8290	56,234
Total	215,013	.6798	146,164
5. Agriculture bulletins:			
1st class			
Priority-up to 11 oz			
Priority-over 11 oz	5	20.3500	102
3d Class			
4th class special (bk)	20	10.3556	207
4th class regular	79	7.9620	629
Total	104	9.0192	938
6.Yearbooks: 4th class special (BK) (total)	7	1.4286	10
7. Other (odd size parcels):			
Priority-up to 11 oz			
Priority-over 11 oz	669	33.3023	22,279
4th class special (Bk)			
4th class regular	2,888	12.6146	36,431
Total	3,557	16.5055	58,710

SENATE FRANKED MAIL, POSTAL QUARTER IV, FISCAL YEAR 1991—Continued

Subcategories	Pieces	Rate	Amount
Total outside DC	421,170	.4690	197,521
Permit imprint mailings:			
3d Class bulk rate	23,022,131	.1177	2,708,879
Parcel post—PI	45	7.7111	347
1st class single piece—PI			
Address corrections (3547's)	750	.3507	263
Address corrections 3d cl)	10,563	.2900	3,063
Mailing list corrections (10 names or less)			
Mailing list corrections (more than 10 names)			
Mailgrams:			
IPA—International priority airmail			
Mailing fees (registry, certified, etc.)			
Postage due/short paid mail			616
Permit fees			75
Miscellaneous charges/ADJ			
Express mail service			676,156
Subtotal	26,443,979	.1864	4,928,268
Adjustments (PFY to GFY 1991)	304,508	.4512	137,399
Grand total	26,748,487	.1894	5,065,667•

TRIBUTE TO JACK MULVENA AND DIANNE SAULNEY SMITH

• Mr. GRAHAM. Mr. President, I rise today to recognize my constituents, Jack Mulvena and Dianne Saulney Smith, who are retiring after years of service with the board of directors of the Department of Off-Street Parking in Miami, FL. In addition to all its official duties, the board of directors of the Department of Off-Street Parking in conjunction with the Dade County Public School System and the Overtown Advisory Board, Inc., are responsible for the development of the Student Cashiers of Overtown Program. [SCOOP]. The SCOOP has made it possible for full-time high school students of Overtown to secure a respectable job based on academic and work performance while being given the opportunity to compete for college scholarships. In addition, the SCOOP has enabled students to finish their studies, receive their degrees and find rewarding jobs. Both Jack and Dianne, together with the other members of the board of the Miami Parking System, the Dade County Public School System, and the Overtown Advisory Board, should be commended for their ingenuity in combining their work with the educational needs of today's youth. Not only do these individuals bring well deserved recognition to their special endeavors, they also significantly enhance our community through their exceptional talents and service.

On this very special occasion, I wish Jack success in his new pursuits and would like to extend my congratulations on behalf of all of the students he has helped through the SCOOP. His commitment and leadership has culminated into opportunities for prosperity in Dade County. In all facets of his personal and professional life, Jack has continually shown dedication to his community and its members. He is a dedicated citizen fully deserving of the many commendations bestowed upon him.

Dianne is to be recognized also for her tireless hours of dedication while serving as chairperson of the board of the Department of Off-Street Parking as well as her outstanding achievements as a practicing attorney. I know that she has brought with her the same leadership, commitment, and high quality of work to her new position as my special council in our Washington office. Dianne's proficiency and talent will surely be missed by those fortunate enough to have worked with her. I consider myself quite lucky to inherit such wisdom and skills.

Please join me in thanking the members of the board of directors and the employees of the Department of Off-Street Parking in Miami, the Dade County Public School System, and the Overtown Advisory Board, Inc., and specially Jack Mulvena and Dianne Saulney Smith for their humanitarian contribution to the Dade County community and to the State of Florida and in wishing to Jack and Dianne every success in their future endeavors.●

HONORING JOHN R. DICKSON

● Mr. KASTEN. Mr. President, I rise today to recognize the tremendous achievement of one of my most distinguished constituents—John R. Dickson of Roundy's, Inc.

John Dickson is a true embodiment of the American dream. He rose from management trainee to the presidency of one of Wisconsin's most important corporations. He did it the old fashioned way—with hard work, perseverance, and dedication.

John's commitment to the pursuit of excellence doesn't apply just at the office. John is a concerned citizen who misses no opportunity to promote the well-being of the community through environmental and political activisim.

When you want to get a job done, give it to a busy man. This is the lesson of John Dickson's life and career—and I ask my Senate colleagues to join me in saluting him.●

UNEMPLOYMENT BENEFITS COMPROMISE

● Mr. LAUTENBERG. Mr. President, I rise to applaud the President for signing the extended unemployment benefits compromise. Finally, the administration decided to allow these much-needed benefits for families across the United States. After being distracted by foreign affairs for most of his tenure in office, the President has decided now that it is time to act on behalf of American workers. I am pleased with this development but it is regrettable that it look so long for the administration to recognize that there are many long-term unemployed in the United States who need help immediately.

This bill will provide 20 weeks of additional benefits to New Jerseyans who have exhausted their regular unemployment benefits. This bill provides much-needed relief to approximately 15,000 New Jersey residents who are exhausting their unemployment benefits each month. The bill also contains a reachback provision that will cover New Jerseyans who have exhausted their benefits since March 1, 1991.

Mr. President, the current recession has forced millions of Americans out of work in what the administration promised would be a brief economic downturn. People in this country are suffering. Nearly 9 million people are out of work in our country. This is an increase of more than 2 million in the past 2 years. In New Jersey, 269,000 people are unemployed. To those who have been laid off the longest, extended unemployment benefits will mean the difference between meeting the house payments and losing the house, between putting food on the table and going hungry.

It is about time the Federal Government took action to help needy families. Without this emergency unemployment compensation bill, millions more Americans will exhaust their unemployment benefits and be forced into poverty.

The administration says we are in a recovery. But every day I hear stories of companies laying off thousands of people. People continue to lose their jobs at an alarming rate. Those people who have jobs are afraid of losing them.

This bill will also provide benefits to unemployed service men and women who have recently returned from the Persian Gulf. This bill allows ex-service members to be treated the same way other Americans are under the unemployment insurance system. The bill would change the waiting period for benefits to 1 week, and benefits payable for up to 26 weeks instead of the 4-week waiting period and 13-week benefit limits in present law. The bill will also make railroad workers eligible to receive extended benefits under their own unemployment insurance system.

Mr. President, extension of unemployment benefits is long overdue. I am pleased that these benefits are finally going out to those families who need them and that some benefits will be paid out before Thanksgiving.●

FAIR UNEMPLOYMENT COMPENSATION FOR THE MILITARY

● Mr. MCCAIN. Mr. President, the debate over the emergency unemployment compensation action of 1991 was a long one, and involved a great deal of controversy and compromise. There is, however, one aspect of this bill that is not controversial and that has not received the recognition it deserves: The fact that it provides a fair unemployment compensation for our military.

At present, our men and women in uniform get only half the unemployment compensation of men and women in civilian life. They got a maximum of 13 weeks of compensation versus 26 weeks of compensation for civilians.

The only reason for this glaring inequity, which has hurt many in the military and their families, is that an effort was made years ago to maintain military personnel ceilings by limiting unemployment benefits.

Today, however, we face a future where more than 500,000 Active and Reserve positions must be cut from the military. Over 300,000 will have to be Active positions.

It is my sincere hope that the new voluntary separation packages we have developed in this year's authorization bill, reducing accessions, and attrition will minimize the number of involuntary separations.

Nevertheless, many highly qualified men and women may still face involuntary separation for no fault of their own. Most will have volunteered to join the military thinking they were volunteering for a lasting career. Some may have served this Nation in Desert Storm. They deserve the same unemployment compensation as their civilian counterparts.

Two years ago, I advanced a transition plan before this body that provided this equity in unemployment compensation, along with other benefits designed to ensure that our men and women in uniform would receive compensation for their years in service and the aid necessary to rejoin the civil economy without damage to their lives and that of their families.

With the strong and creative help of Senator JOHN GLENN, the National Military Coalition, and my colleagues on the Senate Armed Services Committee, virtually every provision of this plan was turned into law. In fact, it is the foundation of one of the voluntary separation options that will be offered in the fiscal year 1992 Defense authorization bill.

The equity in unemployment compensation provision of this transition plan, however, could not be included in the Defense Authorization Act for jurisdictional reasons. As a result, my colleagues in the Finance Committee agreed that they would provide such equity once a suitable legislative vehicle became available.

That vehicle has just been passed by the Senate. It ensures that both military and civilians will get the same period of unemployment compensation provided by each State. It completes the transition plan, and it provides our military with the protection and benefits they deserve.

Accordingly, I would like to thank Senator BENTSEN, Senator PACKWOOD, Senator MITCHELL, Senator DOLE, those of my other colleagues who serve in the Finance Committee, their counterparts in the House—which has similar language, and all my colleagues

who voted for this bill. We may still have differences over some aspects of unemployment compensation, but this is one area where I believe the Nation will unite in saying well done.●

PHOENIX AND TUCSON ARE AMONG THE MOST FISCALLY SOUND CITIES

● Mr. DECONCINI. Mr. President, in this era of economic bad news, I am happy to be the purveyor of some good news. I would like to congratulate and recognize the city governments of Phoenix and Tucson, AZ. A new survey by City and State magazine reports that Phoenix and San Diego are the most fiscally sound big cities in the United States, followed by Tucson. The survey studied the 50 cities with the largest budgets to compare how well each runs its finances. The information was gathered from questionnaires completed by city finance officials and supplemented by city financial documents, interviews with government officials, and credit reports from bond-rating agencies.

The lion's share of the credit for this honor must go to Paul Johnson, mayor of Phoenix and the Phoenix City Council and Tom Volgy, mayor of Tucson and the Tucson City Council. In a year when many cities are struggling for survival, Phoenix and Tucson are successfully coping. They are balancing their numbers through spending cuts and fund transfers.

In the article Paul Johnson said that he went through government last year with a buzz saw, cutting government 5 percent, or $22 million. Trimming budgets during tight fiscal times is no easy task. To retain the support and confidence of the public, elected officials must exercise real leadership. This is what Paul Johnson and Tom Volgy and their respective city councils have been able to do. I applaud their effort and their very impressive results.●

THE INAUGURATION OF CLOSED-CAPTIONED SENATE FLOOR PROCEEDINGS

● Mr. HARKIN. Mr. President, I am pleased that today marks the inauguration of closed-captioned broadcasting of the U.S. Senate floor proceedings. I want to compliment the majority leader and the minority leader for their efforts to bring this to fruition, two months before it was expected. This is indeed, Mr. President, a happy day for all Americans who are deaf or hard of hearing, because now they can read the words spoken by their elected Senators at the bottom of the television screen.

Closed captioning is going to permit our deaf citizens, millions of them across the country, to understand and to watch what this Senate does just like hearing people all over this country. I can tell you they are going to watch and they are going to read and they are going to have a better understanding of what we do here.

But it is not just deaf people. It is people who are hard of hearing. And beyond that, there are people, many people, as we know, in this country for whom English is not their first language, and they are starting, they are trying to learn English. They can now turn on and watch the Senate and the House in session and begin to understand what we are doing here, because they can read it.

So, I am just delighted that we have finally reached this point. I want to congratulate all of the Senators who have worked so hard, again especially to the distinguished minority leader who has been a great leader for so many years in being attentive to the needs of our citizens with disabilities in this Nation.

For too long, the deaf and hard of hearing communities have been excluded from the political process of their country. I am proud to be here today to witness that chapter of our history come to a close.

In 1988, the Commission on the Education of the Deaf issued a report which identified captioning of television as one of the most important technologies for deaf and hearing impaired individuals. The Commission also found that closed captioning is the more effective technology for speeding the attainment of literacy, and more importantly, in helping the deaf person participate in the wider world that is routinely accessible to those who hear. I subscribe to this view.

In addition, last year, we passed legislation that will provide that beginning in 1993, every television set sold in America with the screen size of 13 inches or over will have to have a little chip that will automatically decode every closed captioned program. Zenith Corp. has announced plans to place televisions with this chip on the market this fall, 2 years before it was required to do so by the law. So, we are moving ahead in America.

Equally as important as all of this, is the message that the Senate will send to the Nation. By closed captioning our televised floor proceedings, we send the message that we are committed to implementing the Americans with Disabilities Act in an effective and meaningful way. For too long, deaf and hard of hearing Americans have been excluded from the political process. I am very proud to be here today to witness that chapter of our history come to a close.●

IN HONOR OF CHIEF M. SGT. LESTER GENE HAMPT, USAF

● Mr. DIXON. Mr. President, I rise today to honor Chief M. Sgt. Lester Gene Hampt, U.S. Air Force, who is retiring effective February 1, 1992, with 33 years of active-duty service.

His retirement concludes a distinguished career as an outstanding noncommissioned officer. Recognized for his continued valuable contributions to the Air Force, the Extended High Year Tenure Board at the Military Personnel Center selected Chief Hampt as one of the elite chiefs to continue meritorious service past the 30-year milepost.

Chief Hampt's dedication and tireless efforts on behalf of our Nation's defenses cannot be overstated. His career has spanned the globe in assignments from Southeast Asia to Europe. He is the recipient of many military awards and decorations. His depth of knowledge has made lasting contributions to the U.S. Air Force Medical Service.

Chief Hampt was born in Reisterstown, MD, and now resides in my hometown of Belleville. In our town he is known for his civic activities as a member of the International Foster Care Organization, the Illinois Foster Parent Association, and the Belleville Area Foster Parents Association. He has worked with disadvantaged to very bright children who needed a home. His kindness and generosity is a civic resource that the citizens of Belleville are fortunate to have.

Today, we not only acknowledge the contributions that Chief Hampt has given the Air Force, but we also applaud his exemplary character. The people of the United States are indebted to Chief M Sgt. Lester Gene Hampt's service.

Mr. President, it is in honor and privilege to represent fine Illinoisans such as Chief Hampt. I wish him all the best in his well-deserved retirement.●

KENYA'S GOVERNMENT CONTINUES DOWN THE ROAD TO DICTATORSHIP

● Mr. DECONCINI. Mr. President, over the weekend the Government of Kenya launched another repressive assault on democratic dissent and civil liberties. Kenyan citizens who were attempting to peacefully gather to express support for political pluralism and dissatisfaction with the increasingly dictatorial regime of President Moi were teargassed, clubbed, and stampeded by security personnel. Though Kenyan police prevented foreign diplomats from observing the gathering, President Moi still had the audacity to blame "foreign missions" for organizing the rally and for masterminding and bankrolling opposition to his rule.

While leaders across Africa are heeding demands of citizens for greater political freedom, President Moi stubbornly refuses to acknowledge the legitimacy of any views except his own. He continues to repress all dissent. In fact, by obstinately stifling any peaceful expression of differing political

views, President Moi may be unwittingly bringing about the political instability which he most fears. His refusal to allow peaceful debate almost encourages the opposition to take ever more extreme actions to make political points which they would prefer to express peacefully. Kenya, once a model of political and economic progress, is becoming an anachronism in Africa and its ruler an increasingly isolated, intolerant, ineffective, and desperate dictator.

Mr. President, I had the honor of meeting with a number of individuals now detained by the Kenyan Government. The people of Kenya are fortunate to have at the forefront of their democracy movement such a talented and dedicated group of men and women. These courageous individuals, and their families, have withstood harassment, prison, mistreatment, and other degradations, yet they persevere for the future of their country. Today, after the rally and their arrests, their message is stronger than ever. Kenyans want to share in the resources of their country, and they yearn to participate in its political life.

Mr. President, I rise today to call on President Moi to release all those individuals detained in the past few days for peacefully expressing their respect for democracy, human rights, and political pluralism. Under such circumstances, I believe strongly that the United States cannot conduct business as usual with the Government of Kenya. We should act to cut off all but humanitarian aid, vote against IMF and World Bank loans, and if President Moi still refuses to act with reason, recall our Ambassador, as Germany has done.●

REMARKS OF DR. JAMES BILLINGTON

● Mr. STEVENS. Mr. President, I was privileged to be able to attend the Second Annual James Madison Counsel Dinner on October 7 of this year. It was held in the beautiful grand foyer of the Library of Congress' Thomas Jefferson Building. The keynote speaker was our own Librarian of Congress, James Billington. You all know that Jim Billington is one of the Nation's foremost experts on Russia and the Soviet Union, and it was the Soviet Union and its future that was the subject of Dr. Billington's talk.

As the many Russian experts in this country will attest, being in Moscow at the time of the August coup would not only be an experience of a lifetime, but an experience a Russian expert would give his eye teeth to have. By happenstance, our own Jim Billington was in Moscow during the coup attending an International Conference of Librarians. Through his own vast knowledge of the history and politics of Russia, and his firsthand experience of being in Moscow during the coup, Billington provided the dinner guests with an insightful talk entitled the "Rebirth of Russia."

Mr. President, Mr. Billington's comments deserve a wider dissemination than to those fortunate enough to attend the dinner. Therefore, I ask to insert the text of his speech at the end of my remarks.

The statement follows:

THE REBIRTH OF RUSSIA

(By James H. Billington, the Librarian of Congress)

The events in Moscow during the decisive 48 hours from early morning August 19 to early morning August 21 may be the most important single political happening of the second half of the 20th century. These events marked not just the death of the most destructive ideology and powerful empire of our time but also the birth of an altogether new mentality among the hitherto largely passive Russian people. Confronted with a sudden putsch that reimposed from the top down the old Leninist politics of fear, Russians suddenly and unexpectedly found a way to affirm a new politics of hope—defending on exposed barricades in a steady rain the location of their first elected government, Yeltsin's now famous White House, which replaced the historic Kremlin as the new center and symbol of Russian political legitimacy.

It was the final fever break of a totalitarianism that had continued to enslave inner feelings long after its outer controls had weakened. It was also the cresting of the democratic wave that had engulfed Eastern Europe in 1989, reached the Soviet Union's national minorities in 1990, and provided the rising Russian democratic movement of 1991 with the Lithuanian example of resisting armed reaction by forming a human wall around an elected parliament. Those who put their lives on the line with Yeltsin inside the White House have emerged with new authority and now represent probably the most promising cadre of democratic reformers Russia has ever had.

Those unforgettable 48 hours did not produce the traditional flame of revolution but rather the inner fire of psychological and even spiritual change. Modern revolutions imply violent upheaval, secular ideology, and an alternative program, whereas the events in Russia (as earlier in Eastern Europe) were nonviolent, filled with spiritual idealism, and thrown up from below without clear blueprints. As I saw it there during 2½ weeks in Moscow, Russians experienced a kind of inner catharsis radically unlike the periodic public catharses of their Communist past—involving purges, scapegoats, and external enemies. From the epicenter at the White House, the new psychology of hope spread out in a series of concentric circles—via loudspeakers to the miscellaneous volunteer defenders of the barricades immediately outside, via Xeroxes and broadsides to a broader, more porous circle of peripheral scouts and supporters throughout Moscow (where the only fatalities were recorded), and finally to even wider circles in provincial Russia and the outer world (which often relayed the news back via radio quickly than domestic Russian sources).

I do not want to romanticize the Moscow events, to overestimate the future prospects for the democratic movement, or to minimize the enormous economic and ethnic problems that continue to threaten it. But I think it may be useful to recapture with you tonight some of the special, defining quality of those 48 hours. They represent a new phenomenon that is hard to register on our analytical radar screens but perhaps prophetic of the future and may provide at present unrealized opportunities for the United States.

Before discussing these broader historical and policy aspects, I will offer some concrete illustrations from my own experience—first, of three different aspects or levels of this time of change (the political, the moral, and the spiritual) and, second, of seven special people who collectively illustrate both the vitality and the variety of the democratic movement.

Politically, the events of August added an aura of heroism to the legitimacy that the democratic forces had already gained at the ballot box. Yeltsin atop the tank was the icon; but the decisive turning point may have come on the uncertain first night when the still small and unfocused crowd first heard the electric announcement from the White House that a tank unit from the elite Tamansky division had broken the Junta's monopoly of armed force and gone over to the democratic side. What impressed me, listening to that loudspeaker with a group of Russian friends in the drizzle outside, was not just the realization that lives were now irreversibly on the line but the rather majestic way in which the announcement clarified the nature of the cause—telling the crowd that each of the tank crews would be augmented by one elected member of the Russian parliament—symbolizing both the democratic legitimacy of the opposition and its subordination of military to civil authority.

Those soldiers—and others who later swelled the ranks—triggered a second level of the transformation, which affected far more people than the political face-off itself: The activation of individual moral choice among the general population.

Nothing had been more debilitating about totalitarianism than its corruption of conscience and of moral choice by the politics of fear and an ideology of endlessly rationalizing evil means in the name of utopian ends. And nothing had been more dispiriting to the democratic reformers in the year-and-a-half leading up to the coup than Gorbachev's own avoidance of final choice between the old power structures and the new democratic wave. Suddenly, in the face of two irreconcilable power centers and an uncertain outcome, everyone had to make the kind of choices they had long been able to avoid—within institutions, within families, and within oneself—whether or not to speak up, whether or not to confront the dominantly procoup outlook at the higher echelons of almost every major Soviet institution in Moscow, whether or not to go to the White House, whether or not to go the second night when the Junta announced a military curfew and was in fact planning an attack.

One reason the Junta was not prepared to attack the White House the first day when neither the barricades nor the human wall were fully in place was because they were relying on the paralytic fear that a mere show of force had always induced, assuming that people would prefer authoritarian order to the uncertainties and responsibilities of freedom. Yet the contagion of individual moral choice infected the Junta itself. Some of the most important choices may have been made by Yazov, its top military leader, who decided never to give a clear order to shoot, and by high KGB officers who refused to exe-

cute the well-crafted plans for assaulting the White House on the second day.

Beyond discarding their corrupted political system and their morally compromised way of relating to one another, these events provided a kind of spiritual lift to Russians that has been hardest of all for Western analysts to understand. It is rooted in the determination of the Russian reform leaders to move not just outward towards Western economic and political institutions but also inward to recover their own half-obliterated cultural and religious roots.

I had particularly good opportunities to see this dimension because I was there as the invited guest of a congress of Russian emigres summoned by the Yeltsin government to try to define, in effect, a post-totalitarian Russian cultural identity. I had considerable contact with church and cultural leaders, delivering four lectures on this subject before, during, and after the coup with many from the democratic resistance in attendance.

Part of this spiritual dimension was provided by the direct intervention of the Patriarch of the Russian Orthodox Church on the side of the democratic resistance on the second day of the coup. The Patriarch had initially seemed to follow a long tradition of passivity—saying nothing about the coup when, after a liturgy on the morning of the coup, the main doors of the Cathedral of the Assumption were opened and, for the first time since the Bolshevik Revolution, a Patriarch directly addressed the Russian people in the Kremlin Square. Three of his top metropolitans also refused to rise for a tribute to the embattled Yeltsin government at the opening that evening of the Congress of Russian emigres—one of those metropolitans having bluntly proclaimed his support of the coup forces to me a few moments before.

But after a call from the Yeltsin forces and after he himself called America for assurance of asylum if the putsch prevailed, the Patriarch blessed and publicly supported the resistance. He issued a powerful prayer condemning fratricide over loudspeakers to the forces of the putsch just a half hour before their attack on the White House was expected on the second night when the only bloodshed did in fact take place.

The events, perhaps unconsciously, recovered for Russia submerged elements of its older Christian culture. Almost everyone including confirmed atheists used the word "miracle" to explain how it all ended so well so quickly; and many thought it not accidental that the 48 hours which they say transfigured Russia began on the Orthodox Feast of the Transfiguration; and during the public funeral of the three young men who were killed, orators of all kinds repeatedly played on the Judeo-Christian themes of repentance, forgiveness, and the redemptive value of innocent suffering. The emotional high point of the funeral cortege through Moscow was Yeltsin's farewell to their parents: "Forgive me, your president, that I was unable to save your sons from destruction." "Forgive me" is what Russians say to each other before taking Communion and, almost with those words alone, Yeltsin seemed to reinvest power with deeper (if not higher) authority. Somebody not to blame was assuming personal responsibility in a society where people in power never used to accept responsibility for anything.

Even the rather militantly agnostic Elena Bonner evoked a higher spiritual authority in her powerful speech at the White House which challenged the materialistic assumption of the junta that Muscovites could be wooed into submission by offering sausages for "eight Pavlovian rubles." "We are cleaner, we are higher."

When free television returned after 48 hours of junta control, the resistance was instantly mythologized in a series of quite beautiful documentaries that portrayed the struggle as an almost pure conflict between good and evil rather in the manner of the chronicles—playing up the whiteness of the White House, the sudden appearance of the sun after the near continuous rain of 48 dark hours and the similarity of the three martyred boys to the first Russian saints, St. Boris and St. Gleb, who were also victims of political fratricide.

The memory no less than the reality of those 48 hours has provided Russians with a sense of spiritual aspiration that is more broadly ecumenical than narrowly Orthodox. For a brief moment at least, the reform movement generated a sense of common purpose that transcended some of the enduring internal conflicts in Russian culture that have divided past movements of reform: Between Slavophile and Westernizing tendencies and between elite intellectuals and ordinary working people.

Of course, sudden soaring hopes can easily give way to deep disillusionment. We cannot yet be sure if the proper analogy for an authoritarian Russia that has lost the cold war is authoritarian Germany after it lost World War I or after it lost World War II. After the First war, the fledgling German democracy was doomed by unreasolved economic problems, the indifference of existing democracies, and a nationalistic-fascist reassertion of imperial identity. After the Second War, a new German Federal Democracy flourished with the support of other democracies and an inner commitment to real change.

It is currently almost universally fashionable to be pessimistic about the prospects for Russian democracy—and to use the analogy of a weak Weimar Republic waiting for its Hitler.

But let me suggest a more hopeful outlook by describing seven people whom I had the honor to observe often at very close range during these 48 hours. Each represents a different group active in the democratic resistance; each is a genuine leader, yet largely unknown to the outside world. And behind each of them stand many others from who will come the next generation of leadership that will soon replace that of Gorbachev and Yeltsin.

Alexander Rutskoi is Yeltsin's Vice President, but he has yet to get all the credit he deserves for organizing the defense of the White House in an essentially moral rather than authoritarian way. He is one of the many Afghanistan veterans who provided the military competence for Yeltsin's defense and also a recent convert to Christianity who helped enlist the support of the Patriarch. With the moral serenity of a true leader, he made the organization of the defense an entirely voluntary undertaking—urging each person to examine his own conscience and his own often conflicting obligations to others to determine what role each should be prepared to play in the event of fighting.

Vyacheslav Ivanov is one of the world's greatest linguists and a member of the Library of Congress' Council of Scholars, who represents the extraordinary intellectual talent that has assumed political responsibility in Russia during recent years. As a people's deputy of the Soviet Union, he became a lead negotiator during the crucial 48 hours of the Yeltsin government's dealings with the treacherous Lukyanov, who had remained in the Kremlin as a point of liaison with the junta protected by a mysterious, but vaguely threatening new cadre of central Asian soldiers. Having already turned the Library of Foreign Literature, which he heads, into one of Moscow's most active centers for the open discussion of new Western ideas, he invited the leading reform journal, The Independent Gazette, to publish there when it was outlawed by the putsch. I will never forget his returning to his library to introduce me for a morning discussion on the importance of the knowledge-base to democracy—after spending the perilous second night of the coup in the White House with his son. He proceeded to lead the most exhilarating discussion I can ever remember on the relationship between libraries and democracy—led by a man with a lot to live for, but who was clearly prepared to die for either libraries or democracy.

A third leader was Constantine Lubenchenko, another liberal people's deputy who chaired an independent 190-person group of reform-minded legislators, and—when cut off from his group by the putsch—personally led an internal war of memoranda inside the leadership of the parliament against Lukyanov's efforts to give legislative legitimacy to the so-called extraordinary committee of the junta. Reminiscing with me just after the defeat of the coup about the delegation he led to the Library in 1989, this young representative of the new professional political class, deeply dedicated to establishing the rule of law, described the important roles then being assumed in the post-coup power structure by most of the members of that first of many parliamentary delegations to come on working visits to the Library of Congress. As a token of his gratitude, he gave me for the LC's collections the original copies of some of his key memoranda of the 48-hour period. Lubenchenko's admirers and allies reached even into the KGB, one of whose officers provided him with advance warning of the KGB plan for storming the White House—and detailed information on 28 hitherto unknown secret entry points into the White House from subterranean tunnels.

A fourth leader who was deeply influenced by his visit to the Library of Congress is Rudolph Pikhoya. He is a historian friend from Sverdlovsk (now Ekaterinburg) who typifies (along with his wife who is one of Yeltsin's speechwriters) the substantial Siberian and provincial participation in the Russian resistance; many of them had come to Moscow at the time for the congress on Russian identity that I was attending. Pikhoya was immediately put in full charge of the archives of the Communist Party Central Committee when they were confiscated after the defeat of the coup. He called me to apologize for not seeing me off when I left, but indicated that he was rather busy sorting through the 30 million items in 160 separate archives that must surely constitute one of the greatest untapped resources for writing the full history of our troubled century. He has just this week written me to ask for help in setting up an international commission to oversee a massive microfilming effort—something we are also undertaking for older historical documents in Leningrad in response to the urgent request of the great scholar Dmitry Likhachev. Some of you met Likhachev during his earlier visits to the Library; during the crucial 48 hours he delivered a key address to the crowd of a quarter-million that assembled in the great square of Petersburg to declare their support for the democratic resistance.

A fifth unsung hero was Father Alexander Borisov, a young, elected member of the Moscow City Council and protege of Alexander Men, a prophetic priest mysteriously murdered as the turn towards reaction began just a year ago. Head of a newly opened parish in the heart of Moscow, Borisov conducted during the 48 hours around the White House a non-stop evangelical mission involving prayer, counselling, baptizing, and above all, distributing copies of the New Testament from his newly founded Bible Society to all in danger. He went first to the boys in the threatening tanks and handed out 2,000 Bibles with only one soldier refusing, then gave out an equal number to those on the barricades.

A quite different form of entrepreneurship was represented by a sixth and even less-known hero of those 48 hours, Anatoly Petrik. Petrik is the son of a former Soviet ambassador and a private-sector promoter of the rapidly developing information industry, who on the second night of the coup invited me to the party launching his revival of the prerevolutionary Russian Bibliographical Society. In the midst of the already restrained celebration, the junta-controlled TV suddenly came on with the solemn announcement that everyone had to be off the streets by 11 p.m. curfew—in Russian it was the komendantsky chas, the "commandant's hour" which has a more ominous ring than the word curfew. Everyone interpreted this as the necessary preliminary to an attack on the White House. No one said much except that it was time to go; as they left me off at the Hotel, Anatoly said "You must forgive us for having such a strange government" with a mixture of off-hand jauntiness and deep seriousness characteristic of many of the young participants in these events. One of the older women librarians quietly explained to me that they would all be going to the barricades, that it was up to the Russians to stand up to all of this and important that the older generation join the young "since we are the ones who for so long remained silent."

I think you can imagine how I felt saying farewell as they left to gather up what I later learned was a combination of Molotov cocktails and McDonald hamburgers to take to the White House. I did not know that night if I would ever see them or indeed any of my Russian friends again—and was not sure that I would until firm news came the next morning that there had been no attack and that the coup was unravelling and until—yes—the sun came out and they all began appearing at a final reception for the librarians' conference within a suddenly festive Kremlin.

The person I was happiest of all to see that day was my seventh and last hero, an energetic companion for much of my 2½ weeks in Moscow and the true builder of the extraordinary collection that the Library of Congress now has of the public record of these last exciting years in the U.S.S.R.: the head of our Moscow office, Mikhail Levner. He had been publicly threatened just a few weeks before the coup in an ugly antisemitic incident, and the head of the Soviet institution within which Levner runs our office had treated the entire Library of Congress delegation in Moscow to a chilling reception on the morning of the coup after having taken down Gorbachev's picture and privately making clear to me his support for the junta.

After a busy schedule of calls with me, Levner quietly headed off for his own stand in the rain at the barricades as I should have known he would—wearing a bright Library of Congress T-shirt and collecting leaflets and broadsides all the while for our collections even as he formed part of the human wall. "I did it," he later explained quietly to me "for our motherland" using the intimate Russian word rodina; and in that affirmation of patriotism by someone who had not been all that well treated by many who called themselves Russian patriots, I saw a heartening sign that perhaps old animosities could be genuinely transcended with new hope—even the deep split between Christian and Jew. The same thought was expressed by Russian friends after the public funeral ceremony which in a way closed out these great events with music that combined Orthodox Christian and Reformed Jewish religious chants for the two ethnic Russians and the one Jew who had died on the barricades.

These heroic days have given an enormous adrenalin shot of hope and self-confidence to the Russian people.

But the Russians' new emotional commitment to democracy is not accompanied by any real experience with its institutions. The economy continues to deteriorate, more social violence seems likely, and most of those who sympathized with the coup remain in their old positions and may attempt a second takeover some time during the next year or so if the current chaos continues.

The west clearly has an enormous stake in sustaining the new culture of hope and in helping create sustainable, democratic institutions and free market mechanisms in Russia and the other republics. Mikhail Levner's collection of pamphlets and newsletters makes clear that they have already produced an amazing number of the kind of non-governmental institutions (churches, clubs, cooperatives, cultural organizations, independent unions, etc.) that make up the inventive civil society that enables freedom to work. What they most specially need now, in my opinion, is an all-American engagement of private and local organizations both to establish direct links with their counterparts throughout the U.S.S.R. and to increase massively the number of Soviet citizens who come here for short-term living, studying, and working experiences. The adventure of engaging the American people as a whole with the Soviet people as a whole would represent the kind of human response to both their achievement in August and their continuing needs that Russians specially appreciate but have not yet found from the West. It is more effective and less demeaning to bring Russians here to see how they can adapt our institutional arrangements to their needs than to send more of our advisors over there.

Such people-to-people programs will strengthen the democratic and free market forces which are strongest at the grass roots level. Such programs need not be put on hold pending the outcome of domestic political controversies in what used to be the Soviet Union.

Democratization was defeated in China because it had troops but no leaders. Russia now has leaders without troops—but it has a populace thirsting for basic training in building a new type of society. We can help provide it if we begin bringing people from the Soviet Union in something like the thousands we were routinely bringing in every year from China up until the repression in Tiananmen Square. The seven people I have described need to be multiplied into seven or even seventy thousand. But the sad fact is that we have so far not brought over in the entire postwar period as many Russians as we did Chinese in a single peak year of the recent past. Indeed, no major nation in the modern world has had less exposure to America than the Russians.

We have a practical need to launch a truly massive effort in this area because a democratic Russia is the best guarantee that reform will be stabilized and that those Russian missiles still targeted on us will never be used.

The August surge of hope could easily give way to a backlash of despair in the difficult times ahead unless larger numbers of Russians can gain some sense of how democratic and market institutions really work. Although Communism is dead, there could yet be a return of authoritarian forces under some new nativist fascist banner if more of the peoples of the U.S.S.R. are not rapidly brought out of their long isolation from the modern democratic world. We would then risk becoming again the external enemy—in part because we proved unwilling at a critical turning point in history to give more of ourselves to help others practice the ideals we had so long preached.

It seems only fitting in retrospect that my library colleagues and I were witnesses to the drama of last August. The Russian democrats, scores of whom have visited the Library over the past 3 years, see the Library of Congress as a prime example of what freedom means. They realize that for democracy to work in a complex society, it must be knowledge-based—and that open access to knowledge is the only basis for progress.

Our Congress, by creating at the beginning of its life in this new capital the Library of Congress, established the idea that legislation should be linked to learning. The Congress now, through a special Speaker's commission under Representative Martin Frost, has created an important vehicle whereby the Library of Congress is helping build an infrastructure of knowledge and information support for the emerging new parliaments of Eastern Europe.

It is both inspiring and humbling for those of us who sometimes take for granted the freedoms we have to see how much free institutions mean to those who have been denied them. On a radio call-in talk show on Echo Moscow just 2 nights before the coup, I was amazed at how much Russians in the far corners of their country knew about the Library of Congress and shared in the Jeffersonian ideal of progress built on knowledge and achieved through freedom. Our former protagonists seem to have caught a glimpse through their new politics of hope of what we once thought was a distinctively American dream: The belief that, whatever the problems of today, tomorrow can always be better than yesterday.●

HONORING GENESEO AS A NATIONAL HISTORIC LANDMARK

● Mr. D'AMATO. Mr. President, today is a great day; the culmination of hundreds of hours of labor, a labor of love. For today is the day when the Secretary of the Interior, Manuel Lujan presented a special plaque to the mayor of Geneseo designating the Village of Geneseo as a national historic landmark. Two very special people, Jeannette McClellan and Nancy O'Dea have cochaired the Historic Preservation Commission of the Association for the Preservation of Geneseo and had undertaken, with the clerical support of the mayor and village board's office,

this arduous process and have been very successful.

It was over 2 years ago when Carolyn Pitts, Architectural Historian for the Department of the Interior, visited Dr. Bertha Lederer and took a tour of Geneseo. Ms. Pitts suggested that a theme study take place in Geneseo. That's how the whole adventure of taking slides of street scenes, updating ownership and other research, and photographing any divergences from the National Register began.

The theme study was referred to the Park Service in March of 1991 and received a resounding approval. From there it was forwarded to the National Park System Advisory Board to the Department of the Interior in Olympia, WA. Here the theme study was approved with a high recommendation on April 24, 1991. On July 17, 1991 it was signed and approved by the Secretary of the Interior, Manuel Lujan.

When you consider that of the 50,000 entries in the national register only 2,000 are national landmarks. And when you consider also that Geneseo has become 1 of 20 National Historic Districts in the United States, then you will join with me, the Secretary of the Interior, and the village of Geneseo in celebrating this great honor.

Many thanks to the mayor, the Association for the Preservation of Geneseo, the Historical Preservation Commission, and the village of Geneseo for their perseverance and persistence in bringing this great day about. Congratulations and best wishes.•

S. 140—FEDERAL PILT PAYMENT

• Mr. McCAIN. Mr. President, I want to express my support for Senate bill 140, a measure to authorize urgently needed increases in Federal payments in lieu of taxes.

The Federal PILT Payment Program was designed to compensate counties for lost property taxes due to the Federal ownership of land. In the West, and in my State of Arizona, where millions of acres are held by the Federal Government, private property is scarce and the tax base is limited. Compensatory revenues are critical so that affected counties may provide basic services.

Although the Federal Government has a clear obligation to pay its fair share, PILT payments have not been increased since the program was established in 1976. Passage of Senate bill 140 will remedy this injustice by authorizing an immediate increase in PILT payments and adjusting the yearly payment to the rate of inflation.

I am happy to be a cosponsor of this legislation and I urge my colleagues to approve the measure without delay.•

UNANIMOUS-CONSENT AGREEMENT—S. 869

Mr. MITCHELL. Mr. President, I ask unanimous consent that the majority leader, after consultation with the Republican leader, may at any time, prior to sine die adjournment of the 1st session of the 102d Congress, turn to the consideration of calendar No. 180, S. 869, a bill to improve veterans post-traumatic stress programs, and that it be considered under the following time limitations:

There be 30 minutes for debate on the bill and the committee substitute equally divided between the chairman and ranking member, or their designees;

That no motions to recommit be in order; that the only amendments in order, other than the committee substitute, provided that the chairman or his designee has the right to modify the committee-reported substitute, be the following amendments and that they be considered under the time limitations indicated:

Two hours in a Simpson amendment indexing veterans COLA benefits;

One hour on a Simpson amendment striking section 103 of the committee substitute (section 103 providing for priority care of certain combat-theater veterans for post-traumatic stress);

One hour on a Simpson amendment striking section 104 of the committee substitute (section 104 expands readjustment counseling to veterans of World War II, and the Korean conflict);

Twenty minutes on a Riegle amendment authorizing flying of POW/MIA flag at VA Cemeteries;

Further that all of the above listed amendments be first degree amendments;

That all time be equally divided in the usual form;

That once S. 869 has been read a third time, the Senate then proceed to Calendar No. 140, H.R. 2280, the House companion, that all after the enacting clause be stricken and the text of S. 869, as amended, be inserted in lieu thereof, that the bill be advanced to third reading and the Senate then vote on final passage of the bill; that upon disposition of H.R. 2280, S. 869 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

The text of the agreement follows:

Ordered, That the Majority Leader, after consultation with the Republican Leader, may at any time, prior to the sine die adjournment of the First Session of the 102d Congress, turn to the consideration of S. 869, a Bill to Improve Veterans Post-Traumatic Stress Programs, and that there be 30 minutes for debate on the bill and the committee substitute, to be equally divided and controlled between the Chairman and Ranking Member, or their designees.

Ordered further, That the only amendments in order, other than the committee substitute, providing the Chairman or his designee has the right to modify the committee-reported substitute, are those that follow, to be considered under the time limits as noted:

Simpson amendment, indexing veterans cola benefits, 2 hours;

Simpson amendment, striking sec. 103 of the committee substitute (which provides for priority care of certain combat-theater veterans for post traumatic stress), one hour;

Simpson amendment, striking sec. 104 of the committee substitute (which expands readjustment counseling to veterans of World War II and the Korean Conflict), one hour;

Riegle amendment, authorizing flying of POW/MIA flag at VA cemeteries, 20 minutes;

Ordered further, That all of the above listed amendments be first degree amendments.

Ordered further, That all time be equally divided in the usual form.

Ordered further, That no motions to recommit be in order.

Ordered further, That once S. 869 has been read a third time, the Senate then proceed to H.R. 2280, the House companion, that all after the enacting clause be stricken and the text of S. 869, as amended, be inserted in lieu thereof, that the bill be advanced to third reading, and the Senate then vote on final passage of the bill.

Ordered further, That upon disposition of H.R. 2280, S. 869 be indefinitely postponed.

NATIONAL ELLIS ISLAND DAY; YEAR OF THE GULF OF MEXICO

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged, en bloc, from further consideration of the following joint resolutions: House Joint Resolution 130, designating January 1, 1992, as "National Ellis Island Day"; and House Joint Resolution 327, designating 1992 as the "Year of the Gulf of Mexico"; and that the Senate then proceed, en bloc, to their immediate consideration; that the joint resolutions be deemed read three times and passed and the motion to reconsider be laid upon the table, en bloc; and that the preambles be agreed to; further that the consideration of these resolutions appear individually in the RECORD; and that any statements appear in the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolutions (H.J. Res. 130 and H.J. Res. 327) were deemed read three times and passed.

The preambles were agreed to.

Mr. COCHRAN. Mr. President, I would like to commend my colleagues on the passage of Senate Joint Resolution 194 which designates 1992 as the "Year of the Gulf."

This joint resolution brings recognition to the activities which are planned in 1992 to celebrate the Gulf of Mexico and enhance its contributions to the Nation. The gulf deserves recognition for its economic and recreational importance. It is a national treasure being not only one of the most valuable fisheries but also providing critical habitat for 75 percent of the migratory waterfowl in the U.S., tourism, oil and gas development, and ports provide significant economic benefits to the Nation.

However, the gulf is also experiencing the impact of water pollution. Fishing and recreation have been impaired due to growing dead zones, areas deficient of oxygen. Approximately 3.4

million acres of the shellfish-growing areas along the Gulf of Mexico have been conditionally or permanently closed. The closing of these areas are due in part to the increase in population and development along the coast.

Protection of the gulf is now underway through the Gulf of Mexico Program. Through this program, a strategy has been developed and is being implemented to manage and protect the resources of the gulf. This program encompasses participation from Federal agencies, State agencies, research institutions, and private citizens. The Environmental Protection Agency's Gulf of Mexico Program office, located at the Stennis Space Center in Mississippi, is continually working to coordinate and organize environmental activities to preserve the gulf.

Mr. GRAMM. Mr. President, I am pleased that the Senate has approved Senate Joint Resolution 194, a joint resolution which designates 1992 as the "Year of the Gulf of Mexico."

The joint resolution was introduced several weeks ago by me and Senators GRAHAM, COCHRAN, JOHNSTON, LOTT, and MACK. Since that time, many of our colleagues have joined us in this effort to draw attention to the significant economic, environmental and recreational resources of the Gulf of Mexico.

The gulf is truly a national treasure and well deserves the best stewardship efforts of the people of our Nation.

There have been disturbing signs of potential, long-term damage to the gulf, affecting those who depend on it for everything from jobs to recreation. Clearly, it is time to focus our collective resources on the gulf in an effort to insure that we act in a timely fashion to protect and preserve this unique, natural treasure.

In other legislation which I have introduced with a number of my colleagues, we have proposed that the Environmental Protection Agency develop a comprehensive gulf conservation and management plan. This proposal would authorize a grant program to the States which agree to implement recommendations contained in the gulf plan. It also proposes cooperative agreements with the Government of Mexico in an effort to insure international cooperation with the gulf initiative.

Passage of Senate Joint Resolution 194 and the designation of 1992 as the Year of the Gulf of Mexico would be an important first step in drawing the attention of our Nation to the need for action to protect America's sea.

MEASURES INDEFINITELY POSTPONED—SENATE JOINT RESOLUTION 190, SENATE JOINT RESOLUTION 194

Mr. MITCHELL. I now ask unanimous consent that the Judiciary Committee be discharged, en bloc, from consideration of Senate Joint Resolution 190, and Senate Joint Resolution 194, Senate companions to the above House Joint Resolutions, and that the Senate measures then be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

STOP WORRYING ABOUT THE WRONG NUMBERS

Mr. DOLE. Mr. President, it was back on July 11 when this body responded a bit belatedly to President Bush's 100-day challenge, and passed tough anticrime legislation.

The bill included the first-ever comprehensive Federal death penalty. It included a reform of habeas corpus, which would restore some much-needed confidence in our courts. And, yes, it included a waiting period for handgun purchases.

The House has responded with a bill that, in this Senator's viewpoint, is weaker in many instances, and stronger in a few instances—especially in reform of the exclusionary rule.

And now, it is up for a conference committee to iron out the disagreements, and to send us the tough bill America's law-abiding citizens want and deserve.

But while the American people worry about the number of criminals walking the street, my friends on the other side of the aisle seem to be more worried about the number of Democrats and Republicans on the conference committee.

There are, of course, eight Democrats and six Republicans on the Senate Judiciary Committee. Senator THURMOND, the ranking Republican, has suggested that the Senate conference committee be comprised of half those numbers—four Democrats, and three Republicans.

Or Senator THURMOND has suggested, why not appoint the whole committee as conferees—eight and six.

The chairman of the Judiciary Committee insists the only good conference committee is one comprised of five Democrats and three Republicans.

Mr. President, I am not certain when we are going to adjourn this year; if we are going to adjourn this weekend or sometime next week. It is probably unreasonable to suggest with all the differences between the House and Senate bill, that a conference could be concluded. But it would be my hope, because of the experience we have had with the House in past conferences, that we make certain we protect the Senate's provision.

And I suggest, the distinguished Senator from South Carolina, having advanced two proposals that are fair, and I hope that we could choose one of these suggestions by Senator THURMOND and to conference on this bill, even those we might not complete action before final adjournment.

Mr. President, we have played this game before.

Last session, we passed solid anticrime legislation, only to have the conference committee strip the meat from the bill, and leave nothing but the bones. And I know there are those who would like nothing more than to send the President a watered-down bill that he will not sign.

Mr. President, Senator THURMOND has advanced two proposals that every Senator in this Chamber knows are fair. It is time to choose one and to send the message that the safety of the American public is more important than partisan political squabbling.

Mr. MITCHELL. Mr. President, I share the view expressed by the distinguished Republican leader that we be able to complete action on the crime bill in this session, but I must confess that does not appear likely for a variety of reasons, not all of which are related.

As the distinguished Republican leader may know, earlier today our friend and colleague, Senator SYMMS, spoke on the Senate floor, and obviously what he said is a matter of record. But I understand he described this as not an anticrime, but a procrime bill, and said he would do all he could to keep it from going to conference in this session. He has the right to object, and he has indicated he will do so.

On the question of conferees, we have had a number of exchanges, and I really do not want to prolong it, except I want to put in the RECORD that there have been two crime bill conferences in the past decade.

In 1982, at which time there were 53 Republicans and 47 Democrats in the Senate, there were then 8 conferees: five Republicans and three Democrats. In 1990, at which time there were 55 Democrats and 45 Republicans, there were then eight conferees: five Democrats and three Republicans. Now, there are 57 Democrats and 43 Republicans, and what Senator BIDEN has proposed is 8 conferees: 5 Democrats and 3 Republicans. That is the same number for the majority and for the minority as occurred in both 1982 and 1990, at which time there were fewer Members in the then-majority than is now the case.

I ask unanimous consent that these documents documenting the facts which I just stated and identifying each of the conferees from the Judiciary Committee and, in the latter case, in 1990, other committees related to other sections of the bill, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

1982 CRIME BILL

Senate conferees on H.R. 3963, the 1982 crime bill that President Reagan pocket vetoed, were:

Democrats: Biden, Kennedy, Leahy.
Republicans: Thurmond, Mathias, Laxalt, Hatch, Dole.
(December 2, 1982; Cong. Rec. S13771.)

1990 CRIME BILL

The Senate appointed the following conferees on H.R. 5269, the 1990 crime bill:
Democrats: Biden, Kennedy, Metzenbaum, DeConcini, Leahy.
Republicans: Thurmond, Hatch, Simpson.
For title XXI of the bill:
Democrats: Riegle, Wirth, Graham, Dodd.
Republicans: D'Amato, Heinz, Bond.
For title XXII, section 2224, of the bill:
Democrats: Riegle, Wirth, Dodd.
Republicans: Heinz, Roth.
For title XXIII:
Democrats: Pell.
Republicans: Helms.
(October 22, 1990; Cong. Rec. S16480.)

ORDERS FOR TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 8:30 a.m., Tuesday, November 19; that following the prayer, the Journal of proceedings be deemed approved to date, and the time for the two leaders be reserved for their use later in the day; that there be a period for morning business, not to extend beyond 10 a.m., with Senators permitted to speak therein, with the following Senators recognized to speak in the order listed: Senator SPECTER for up to 30 minutes; Senators HEFLIN and GRASSLEY for up to 10 minutes each; and with the time until 10 a.m., under the control of the majority leader or his designee; that the Senate stand in recess from 12:30 p.m. to 2:15 p.m., in order to accommodate the respective party conferences.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL TOMORROW AT 8:30 A.M.

Mr. MITCHELL. Mr. President, if there is no other business to come before the Senate, I now ask unanimous consent that the Senate stand in recess, as under the previous order.

There being no objection, the Senate, at 7:07 p.m., recessed until Tuesday, November 19, 1991, at 8:30 a.m.

NOMINATIONS

Executive nominations received by the Senate November 18, 1991:

DEPARTMENT OF STATE

JOHN HUBERT KELLY, OF GEORGIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF FINLAND.